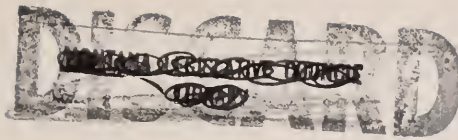


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# Montana Community Development Block Grant Program

## 1983 Grant Administration Manual

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MONTANA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM  
1983 GRANT ADMINISTRATION MANUAL

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## INTRODUCTION

The procedures described in this manual and during the training sponsored by the Montana Department of Commerce (DOC) are designed to serve several purposes. The administration manual provides information that will assist you in managing the grant so as to successfully complete your project and comply with federal and state requirements.

The management system outlined in the manual will allow the State to meet its responsibility for assuring compliance by local grantees of federal and state laws that govern the CDBG program. It will assist DOC in the performance of its various functions as the granting agency, including release of grant funds, review of project activities, determination of project progress, disbursement of funds to the local recipient, and close-out of completed activities.

The reporting and monitoring procedures will be used by the State CDBG staff to determine the on-going technical assistance needs of local grantees. The monitoring system adopted by DOC is intended to help avoid, identify, or correct potentially serious problems in project activities before there are major problems or legal implications.

In many instances the information required by the State is directly tied to monitoring of the State program by the U.S. Department of Housing and Urban Development (HUD). This information will also be incorporated in the annual performance report which DOC must provide to HUD in order to assure Congress that the states and their grantees are administering the CDBG program as it intended.

The manual identifies information the local grantee should be collecting on a continuing basis to avoid situations where the State would have to ask the localities to reconstruct reporting materials such as time sheets, evidence of public notices, or records of bidding and contract procedures.

## FEDERAL AND STATE REQUIREMENTS

Perhaps the most controversial and misunderstood aspect of the CDBG program is the set of legal and regulatory requirements that govern the use of CDBG monies. The sources of these requirements include:

- Provisions contained within the federal Housing and Community Development Act (HCD) of 1974, as amended;
- Regulations adopted by HUD (24 CFR 570) which govern the state-administered program;
- Other laws and regulations which apply to the use of any federal assistance, generally labelled "other applicable federal laws and regulations;" and
- Applicable state laws and regulations.

Upon accepting federal or state assistance for a community or economic development activity, many local officials are surprised at the number of applicable laws, sometimes called "strings," attached to the use of these resources. The sum total of state and federal rules represents a set of guidelines with which expenditure of public funds must be consistent. For example, few of us would disagree that use of public dollars should be free from conflicts of interest or that efforts should be made to mitigate negative environmental impacts.

More often, it is not the principles involved, but the extensive web of procedures and paperwork that local officials find discouraging. However, experience has shown that local officials have been the primary beneficiaries of these procedures. This has been particularly true in terms of legal challenges to CDBG activities. For example, by following generally accepted procedures of competitive awarding of construction contracts, the grantee greatly reduces the possibility of a legal suit by an unsuccessful bidder that might delay or disrupt the timely completion of the project.

## MANUAL AND TRAINING FORMAT

This manual and the grant administration training to be conducted are divided into two major components. The first part of the training covers chapters in the manual which are geared toward grantee preparations prior to the actual start of CDBG project activity. Start-up elements will be covered during an initial two-day training session for grantees. This preliminary instruction is covered in Chapters I, Project Start-up, II, Environmental Review, and III, Procurement Standards, of this manual.

The second major component of the grant administration training will be a two-day workshop which focuses on the range of federal and state program requirements such as financial management, labor standards, civil rights, and acquisition of property. These areas are covered in Chapters IV - XI of the training manual. An accompanying Requirements Notebook will be provided as a supplement and will include key requirements referenced throughout this manual.

## DEPARTMENT OF COMMERCE-CDBG STAFF CONTACTS

Throughout the process of administering a grant under the Montana CDBG Program, local officials and staff will be working closely with Montana Department of Commerce staff for the CDBG Program. If you have any questions, please contact any of the following individuals:

Nancy L. Leifer, Administrator, Community Development Division  
David C. Cole, CDBG Program Manager  
Bobbi Balaz, CDBG Project Manager  
Larry Curran, CDBG Project Supervisor  
Bill Duffey, CDBG Project Supervisor

Montana Department of Commerce  
Community Development Division, CDBG Program  
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# **Chapter I**

## **Project Start-Up**



## CHAPTER I

### PROJECT START-UP

This chapter of the manual explains important administrative steps which precede project implementation and construction activities:

- incurring start-up costs;
- establishing a plan for project administration;
- designating local project and fiscal contacts;
- developing the contract;
- establishing project files; and
- establishing method of payment.

Chapter I also addresses conflict of interest and State monitoring of grantees. As a summary, a checklist of start-up activities is included.

Another critical administrative step which must precede project implementation is the environmental review process, which is covered in Chapter II.

#### INCURRING START-UP COSTS

The announcement of the CDBG awards does not authorize the grant recipient to begin incurring costs. Also, funds cannot be used to reimburse the local general funds for any costs incurred prior to the award of the grant, such as expenditures associated with application preparation or previous engineering work. Expenditure of CDBG dollars or local funds to be reimbursed later with CDBG funds can occur only after the local government has reviewed the various sub-activities of the project to determine their possible effects on the environment, and received a notice from the Department of Commerce indicating that a specific CDBG-related cost has been authorized.

Only the costs for those sub-activities which are defined as environmentally exempt under federal law can be incurred. Examples include administrative travel costs to attend the grant administration

training, and costs associated with selecting a consultant to assist a local government in managing a CDBG grant. Before any costs are incurred for the administration of the grant, the grantee should review the environmental review procedures discussed in Chapter II.

These expenses must be paid out of local government funds which will subsequently be reimbursed after a contract has been executed and arrangements made for drawdown of grant funds. Procedures by which grantees will establish the method of payment and be reimbursed are discussed later in this chapter.

At this stage, only administrative costs can be reimbursed. Under no circumstances may the local grantee expend any grant funds for actual project construction until the environmental review is completed and DOC issues a release of funds as provided in Chapter II.

#### ESTABLISHING A PLAN FOR PROJECT ADMINISTRATION

The Montana CDBG Program requires that grantees have the capacity to undertake and satisfactorily complete the project. Therefore, grantees will need to develop a plan to specifically demonstrate to DOC how project management will be accomplished.

An initial decision that must be made is establishing local project structure. Local administration of CDBG projects generally takes one of several forms. In some cases, the local governing body designates a public employee (such as planning director, engineer or clerk) as the CDBG project manager. In other instances, the locality will contract with a third party to manage the grant activities. If you foresee the need to make another arrangement for grant administration, such as contracting with an existing agency such as a local housing authority, contact the CDBG liaison for guidance. An interlocal agreement and other special steps are necessary in such cases.



DOC recognizes the above-described arrangements as acceptable for project management with reasonable and appropriate costs eligible for reimbursement with CDBG administrative funds as provided in the contract between the grantee and DOC. Regardless of the option selected, responsibility for completion of grant activities and compliance with federal and state requirements rests with the grantee, the governing body. The local administering agency should create a file specifically for records related to hiring and employment practices associated with CDBG project management.

#### Administration by Public Employees

When using existing staff or hiring additional public employees, called force account labor, the responsibilities of local officials include accurately documenting all costs and ensuring that hiring and employment are consistent with federal and state equal employment opportunity (EEO) and non-discrimination provisions. The provisions are discussed in detail in Chapter V, Civil Rights.

In general, when using existing staff or hiring additional staff on the local payroll, the local governing body should assure that:

- the locality has written personnel and employment policies which specifically prohibit discriminatory practices based on race, national origin, religion, creed, color, sex, age, or physical or mental handicap, or marital status;
- EEO guidelines are followed in advertising for new employees;
- sufficient records are maintained related to persons interviewed and hired with specific data on sex, race, handicap, and/or national origin; and
- sufficient records are maintained related to training for, promotion of, or compensation to any individual paid with CDBG administrative funds.

When using local employees for CDBG project management, the key is to document all expenditures of time and dollars associated with the administrative activities. Samples of documentation include:

- employees' time and attendance sheets;
- copies of travel vouchers with accompanying documentation;
- documentation of all other direct expenses (e.g. printing);
- documentation of indirect costs (e.g. telephone and rent) or evidence of an approved costs allocation plan for claiming indirect costs; and
- copies of all cancelled checks for CDBG related expenditures.

#### Management by Contractor

When opting to contract for professional services for grant administration, the local government is required to follow certain procedures to ensure compliance with applicable federal and state standards for procurement of services. Federal standards are outlined in OMB Circular A-102, Attachment O, which is provided in the Requirements Notebook. These procedures are designed also to protect the locality and guarantee that it receives the services for which it solicits and awards the professional services contract in accordance with federal and state law.

All contracts are subject to strict requirements providing for a free and open competition. Most professional services contracts are done through non-competitive negotiation procedures as described in Attachment O. There are several ways to obtain professional services.

#### Request for Qualifications (RFQ)

If your community is uncertain of the specific details involved with administering the grant, the RFQ may be an appropriate option. The locality requests interested bidders to submit information related to their ability and expertise in project management. The locality then ranks the potential contracts and selects from among the two most qualified candidates. Then discussions will begin regarding approach, costs, schedules, contract formats, etc.

## Request for Proposals (RFP)

Before requesting proposals for a professional services contract, be sure that you know exactly what you want the contractor to do. For example, will the contractor be responsible for periodic inspections of construction work? If so, how often should the inspections be made and are the inspections to cover only physical improvements or is the contractor also responsible for monitoring compliance with program requirements such as fair labor standards?

With the RFP, the locality prepares an invitation for contractors to compete for providing the desired services. The RFP contains information describing the scope of desired services, the type of payment (e.g. cost reimbursement or fixed price), information that the locality needs from each interested party to make the contract selection, and the method by which proposals will be evaluated. It is important to note that cost plus contracts are not legal under the CDBG program.

Upon selecting the successful candidate, the locality executes a contract which sets for the specific activities to be performed by the contractor, the amount of compensation the locality will provide the contractor, and other terms and conditions of the contract. At a minimum the contract should include the provisions discussed in Chapter III, Procurement Standards.

Chapter III includes greater detail regarding different methods of procuring services and explains regulations which must be adhered to regarding provisions which must be included in contracts. Equal employment opportunity and conflict of interest are particularly important.

A useful guide containing more information is Working With Consultants, published by DOC in May 1983. Contact the CDBG liaison if you would like to obtain a copy.

## DESIGNATING LOCAL PROJECT AND FISCAL CONTACTS

Once the grantee has decided on a local project administration structure the grantee will be asked to designate, by letter to the CDBG liaison, an individual associated with the local jurisdiction or CDBG administering agency to serve as a project contact during the effective period of the grant contract. (See sample in Exhibit I-A.) In most cases the project contact should be either the public employee or head of the public agency designated by the locality to administer the project. In some cases, the locality may want to designate an elected official. In either instance the person should have a working knowledge of the day-to-day activities associated with the project. All requests for information or notices related to CDBG activities from the State CDBG staff will be channeled through the project contact.

In the same letter, the locality should designate a contact for fiscal matters related to the disbursement of funds to the grantee and expenditures for project activities. The fiscal contact in many cases may be the local fiscal officer, particularly in those cases where the grant funds are being disbursed through the locality's regular disbursement process. This need not be the case however. The only criteria for designation of the fiscal contact is that the person has knowledge of all receipts and expenditures associated with the CDBG-funded activity.

## DEVELOPING THE CONTRACT

The CDBG staff will coordinate with local officials to discuss the details of the contract between the locality and DOC. The contract will reflect the terms, conditions, and timetables as proposed in the application and submitted to DOC. Because the application as submitted was the basis for the award of the grant, the grantee may not make substantial changes in the project. If changes are proposed when the contract is being developed, DOC will consider whether the modification is substantial enough to necessitate

re-evaluating the project's ranking. If necessary, the DOC committee which evaluated and ranked the applications may be asked to consider the proposed modification and its impact on the scores originally assigned the application.

Each contract consists of language common to all CDBG contracts, generally labelled "boilerplate." Each contract also contains language specific to each contract, such as amount of the grant, scope of work, conditions, budget, and project schedule. Each provision is legally enforceable and designed to protect both the grant recipient and the State.

The contracting process can be expedited if the locality prepares a draft contract for review by DOC. The CDBG liaison will send a packet to the local project contact, including a sample contract appropriate to the type of project. (Sample contracts for housing rehabilitation and public facilities projects are included as Exhibits I-B and I-C.) Contracts for economic development and comprehensive projects usually have other specific sections, although much of the "boilerplate" will be common. To modify a sample contract, pay particular attention to sections addressing grant amount, scope of work, conditions, budget, and project schedule. As noted earlier, be sure the draft contract reflects project details as represented in the application.

As the contract is legally binding on the locality, local officials should insist that any "understandings" between the State and locality be written into the contract. The city, town, or county attorney should be involved in the development of the contract to assure accuracy and consistency with local powers and authorities. For example, if the locality has an approved local building code, all housing rehabilitation activities must conform to the local code requirements. Under the Montana CDBG program, any agreement which provides CDBG funds for housing rehabilitation loans or grants should specify that any improvements to the property must conform to local

building codes and standards. It is the grantee's responsibility to include provisions related to local project requirements in any contract or agreement through which CDBG funds are passed to the final beneficiary.

The legal counsel for the grantee should also carefully review the scope of work outlined in the grant contract to ensure that the locality has the legal authority under Montana law to undertake all of the activities described in the contract document. For instance, if an economic development project includes a loan to a for-profit entity, the county or municipal attorney should provide the Montana Code Annotated citation which enables localities to engage in this activity.

Upon receiving your draft contract, DOC will review it and have further discussion with the local contacts and resolve discrepancies. Once agreement is reached on the contents, the CDBG liaison will prepare three copies of the contract. All necessary signatures will then be obtained from DOC and from the mayor or all three county commissioners.

If, at a later date it is necessary to amend the contract, contact DOC for guidance. Proposed changes will be evaluated for conformance to the application to determine whether re-ranking would be necessary.

#### ESTABLISHING PROJECT FILES

This section provides a general outline of a suggested file system that will meet DOC monitoring requirements. Through the establishment and continuous updating of the project files, the grantee should have gathered and organized all the data and documentation that DOC will require for monitoring purposes. Monitoring by DOC will be in the form of reports submitted by grantee and on-site monitoring visits by the CDBG staff. The local project manager and fiscal contact should work together to establish project

files and discuss their content. This is particularly important with the financial management file described below. Many of the specific file entries will be discussed in the remaining sections of the manual as they relate to specific CDBG project activities and compliance with state and federal regulations.

#### Application File

The application file should contain a copy of the grantee's application as submitted to DOC, all supporting documentation including the publication notices for and records of the required public hearings, and any survey or other data used to prepare the application, such as income surveys or a housing conditions survey.

#### Contract File

This file should contain the executed copy of the grant contract between the grantee and DOC including all general terms and conditions, specific conditions, and attachments. In addition, and future amendments to the contract would be retained in the file.

#### Project Timetable

A copy of the project schedule from the grant contract with periodic progress reports should be included in this file. The purpose of this file is to identify potential project delays and prepare to make the needed adjustments in project activities.

#### Hiring Public Employees or Contracting For Professional Services

If the project will be administered by public employees, hiring and employment records should be maintained in this file. If the local project is being administered through a contractual arrangement for professional services, this file should contain a copy of the solicitation for services and the agreement between the locality and the consultant. Chapters III, Procurement Standards, and V, Civil Rights, provide additional guidance.



### Correspondence

This file should contain all written correspondence between the grantee and DOC and notes related to any telephone discussions with the CDBG staff, and other state or federal agencies. It should contain similar information for contact with private agencies and general correspondence relating to the project.

### Department of Commerce Monitoring

All correspondence from and to DOC regarding monitoring of the grant should be retained in this file. It is especially important to include all monitoring letters from DOC along with responses to those letters from the chief elected official or others.

### Legal File

A file including legal opinions from the grantee's attorney or from DOC should be maintained. Records of any other legal contacts should also be retained.

### Special Directives

Periodically, DOC will send directives to grantees to address issues of policy, procedure, etc. Whether these originate from DOC or from another state or federal agency and are forwarded to you from DOC, they should be retained. Additionally, applicable locally-generated directives should be included.

### Complaints

This file will contain all written correspondence and notes of complaints which local citizens or others may have lodged in regard to any aspect of the local CDBG project.



### Conflict of Interest

A copy of any inquiry concerning potential conflicts of interest or requests to DOC for determinations concerning this issue should be retained in this file.

### Environmental Review File

This file should contain all data and documentation prepared in response to environmental review requirements including all notices, the environmental assessment, the request for release of funds, and the DOC notice that funds have been released. (See Chapter II for a more detailed listing of documentation to be included in the file.)

### Financial Management File

Unlike the other files, a financial management file may be maintained by both the project manager and the clerk/treasurer, in which case there is likely to be some duplication in the file. It may be kept in the clerk/treasurer's office if it will be readily available for review by DOC. The financial management file should consist of several sub-files, including:

- Copies of the Signature Certification and Designation of Depositary forms;
- A copy of the general ledger;
- Documentation of all expenditures including invoice vouchers and supporting documentation;
- Source documentation such as cancelled checks and bank deposits;
- Payroll records for local staff administering the CDBG program including time and attendance records;
- Monthly bank statements;
- Audit reports including both the financial audit and the compliance and program audit.

Chapter IV provides additional information.

### Civil Rights File

The civil rights file should contain all documentation related to grantee responsibilities for compliance with state and federal laws. (See Chapter V, Civil Rights.)

### Labor Standards File

This file will contain all documentation related to grantee responsibilities for compliance with applicable state and federal laws. (See Chapter VI, Labor Standards.)

### Acquisition/Relocation File

This file should contain a copy of records on any acquisition activities and of locally established procedures for relocating of displaced households and/or businesses. (See Chapter VII, Acquisition/Relocation.) Additionally, the grantee must keep a separate file on each relocation case including copies of all notices, case information, and evidence of successful relocations with appropriate compensation.

### Public Facilities Contract Files

For each construction contract, a separate file should be established which contains the request for bid, bid document, contract document, minutes of the pre-construction conference, and other related materials. (A more detailed listing of file entries is included in Chapter VIII, Public Facilities Projects.)

### Housing Rehabilitation Files

This file should contain a copy of the locally established procedures for conducting the housing rehabilitation project. Additionally, a separate file for each rehabilitated unit should be maintained. The

file should include the agreement between the locality and the assistance recipient, copies of all work write-ups, bids, contracts, and inspection reports. (See Chapter IX for further detail.)

#### Economic Development File

Where applicable, this file would contain a copy of the agreement between the locality and any recipient of CDBG assistance. (Required provisions for the agreement are discussed in Chapter X, Economic Development.)

#### Close Out

See Chapter XI, Close Out, for a listing of the reports and local responses to be provided in the Close Out File.

#### ESTABLISHING METHOD FOR PAYMENT

DOC has reserved the full amount of funding for each grant as contained in the contract. Before any CDBG funds can be requested, several forms must be completed and submitted to DOC to establish the mechanism for requests for payment, "drawdown" of funds. The Signature Certification (Exhibit I-D) provides that only certain officials are authorized to sign requests for payment.

The Designation of Depositary card (Exhibit I-E) provides that the payment will be wired directly to the designated bank. The Designation of Depositary must indicate the name and/or number of a non-interest bearing account in which DOC will authorize direct deposit of funds. Federal regulations provide that local grantees cannot collect interest on advances of federal funds deposited into the local government's account for the grant. Additionally, every effort should be made to deposit the funds in a bank located within the project area (defined as the boundaries of the recipient jurisdiction).

Two original copies of each form should be completed by the grantee. Mail one copy to the CDBG liaison and retain the other copy for your records. It is important that there be no erasures or corrections on either copy, or DOC will be required to reject the forms, delaying the locality's ability to receive payment of CDBG monies. If the grantee needs to change the authorized signatories or depository, a new set of forms will need to be submitted to DOC.

#### CONFLICT OF INTEREST

Whenever the local CDBG project requires the selection of contractors or beneficiaries (e.g., housing rehabilitation assistance recipients), the locality must ensure that these decisions are free from actual or potential conflicts of interest. As a general rule, any person who might potentially receive benefits from CDBG assisted activities may not participate in the decision making process. At the least, this prohibition on receiving project benefits extends to the decision-maker's immediate family, including spouse and children. Conflict of interest research provisions apply not only during the term of office or employment, they also are in effect for one year thereafter. For additional information, see Chapter III, Procurement, and the HUD guidelines on Conflict of Interest Provisions provided in the Requirements Notebook. Whenever there is any question regarding conflict of interest, contact the CDBG liaison for guidance.

Additionally, all local public elected officials and employees are bound by state laws related to conflicts of interest. These provisions can be found in sections of state law and attorney general's opinions referenced in Chapter III.

#### STATE MONITORING OF GRANTEES

During the course of the local CDBG project, DOC will monitor grantees through progress summaries which must accompany requests for

payment, and through on-site monitoring visits. The State CDBG liaison will schedule at least one monitoring visit for each grantee. The liaison's role will be to assist grantees in achieving timely and efficient grant management.

Following the release of project funds it is important for the grantee to ensure that administrative procedures have been developed and are in place. Approximately three or four months after the release of funds, it is important for the recipient to compare project progress with the approved budget and schedule. A site visit by DOC related to project close-out is designed to review all aspects of the project ranging from general project performance to monitoring of compliance with federal and state requirements.

Prior to a monitoring visit the CDBG liaison will contact the local project administrator concerning the timing and scope of the monitoring visit. The local project contact will be responsible for setting up interviews and meetings as required for the State liaison to accomplish his or her monitoring objectives.

Each monitoring visit will include entrance and exit interviews. The entrance interview is designed to outline the scope of the monitoring visit. The exit interview provides an opportunity to clarify and elaborate on any outstanding issues identified during the site visit. Every effort will be made to informally resolve any monitoring findings during the exit interview.

Within 30 days DOC will submit a written report to the grantee. The grantee then has 30 days to respond to the report describing actions taken to resolve any monitoring findings. At all times, the State CDBG staff will offer and provide technical assistance to grantees to resolve any monitoring findings.

## CHECKLIST FOR START-UP ACTIVITIES

In summary, Chapter I sets forth the following activities which the grantee must undertake to start-up the grant:

\_\_\_\_\_ 1. Receive approval from DOC to incur administrative costs.

- a. review environmental requirements
- b. receive DOC letter of authorization

NOTE: The environmental review process is a critical and sometimes complex start-up activity, and is discussed in Chapter II.

\_\_\_\_\_ 2. Establish a plan for project administration.

- a. determine whether a public employee or a private contractor will manage the grant activities
- b. follow federal and state law regarding hiring and employment practices

NOTE: Hiring staff or retraining professional services through contracting is another critical and complex activity. It is further discussed in Chapters III, Procurement Standards, and V, Civil Rights.

\_\_\_\_\_ 3. Designate local project and fiscal contacts. See form in Exhibit I-A.

\_\_\_\_\_ 4. Develop the contract.

- a. coordinate with CDBG liaison
- b. modify sample contract in Exhibit I-B for housing projects or I-C for public facilities projects
- c. obtain review by city, town, or county attorney

\_\_\_\_\_ 5. Establish project files for the following. Those indicated with an "\*" may or may not be applicable for your project.

- a. application
- b. contract
- c. project timetable
- \*d. hiring of public employees or contracting for professional services
- e. correspondence
- f. DOC monitoring
- g. legal
- h. special directives
- i. complaints
- j. conflict of interest
- k. environmental review record
- l. financial management
- m. civil rights
- \*n. labor standards
- \*o. acquisition/relocation
- \*p. public facilities contracts
- \*q. housing rehabilitation
- \*r. economic development
- s. close out

\_\_\_\_\_ 6. Establish method for payment.

- a. complete signature certification form, Exhibit I-D
- b. complete designation of depositary form, Exhibit I-E.

\_\_\_\_\_ 7. Beware of possible conflicts of interest.

\_\_\_\_\_ 8. Anticipate DOC monitoring of your grant.





## CHAPTER I

### EXHIBITS

- I-A - Designation of Local Project and Fiscal  
Contacts
- I-B - CDBG Contract for Housing Rehabilitation
- I-C - CDBG Contract for Public Facilities
- I-D - Signature Certification
- I-E - Designation of Depositary



EXHIBIT I-A

DESIGNATION OF LOCAL PROJECT AND FISCAL CONTACTS

(Type of letterhead of grantee)

Date

Montana Department of Commerce  
Community Development Division, CDBG Program  
Capitol Station, Cogswell Building, Room C-211  
Helena, Montana 59620

This is to notify you that the following individuals will be the local government contact persons for the (name of grantee: City, Town or County) FY 1983 CDBG grant:

\*LOCAL GOVERNMENT

PROGRAM CONTACT:

name

complete mailing address

telephone number(s)

\*FISCAL CONTACT:

name

complete mailing address

telephone number(s)

Sincerely,

\*\*signature

typed name

\*NOTE: The project and fiscal contacts designated on this form should be local government employees or elected officials, not private consultants retained to assist the local government in grant administration.

\*\*NOTE: This should be signed by the chief elected official (mayor or chairperson of county commission), or by another elected official if the chief elected official has been designated as one of the contact persons.



EXHIBIT I-B

CDBG CONTRACT FOR HOUSING REHABILITATION

NOTE: This is an example only. Each contract will require its own specific information.

COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT  
CONTRACT # MT-CDBG- 83-

This Contract is entered into by (City, Town, or County of \_\_\_\_\_), Montana, herein referred to as "the Grantee" and the State of Montana Department of Commerce, Helena, Montana, herein referred to as "the Department."

WITNESSETH THAT the Grantee and the Department mutually agree as follows:

1. PURPOSE. The purpose of this Contract is to provide for funding for project activities approved by the Department under the Montana Community Development Block Grant Program for FY 1983.

2. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract takes effect on \_\_\_\_\_, 198\_. The activities to be performed by the Grantee will be completed no later than \_\_\_\_\_. Activities shall conform to the implementation schedule included as Attachment A, which by this reference is made a part hereof.

3. SCOPE OF ACTIVITIES AND LEVEL OF FUNDING. The Grantee will engage in activities for the project entitled the (name of community) Housing Rehabilitation Project. The major components of the project include the rehabilitation of a minimum of \_\_\_\_\_ residential structures, the demolition of \_\_\_\_\_ structures, and the administration of this Contract. "Rehabilitation" will include using CDBG funds to make repairs to the substandard residential units to the extent that each meets or exceeds requirements as listed in the 1983 Montana Community Development Block Grant Program Description, which by this reference is made a part hereof. Recipients of assistance under the program will meet the guidelines for eligibility, and the conditions set forth in the Grantee's CDBG application dated \_\_\_\_\_, 198\_, which by this reference is made a part hereof.

The total amount of this Contract is not to exceed \$ \_\_\_\_\_. The Grantee will commit program income from the Grantee's prior CDBG Housing Rehabilitation Project as outlined in the application. A copy of the project budget is included as Attachment B to this Contract, and by this reference is made a part hereof. The Grantee is authorized to make adjustments between line items in Attachment B, in a total amount not to exceed five percent of the total Contract amount, without prior written approval from the Department as long as the transfers do not violate the conditions upon which the grant was awarded. However, transfers between the administration and project categories may be made only upon prior written approval by the Department.

4. COMPENSATION AND METHOD OF PAYMENT. The Department will authorize the Grantee to draw up to \$\_\_\_\_\_ against the funding reserved for it by the Department. In drawing against the reserved amount the Grantee will follow the instructions supplied by the Department. If the Department determines that the Grantee has failed to satisfactorily carry out its responsibilities under this Contract, the Department may revoke the Grantee's authority to draw against the reservation described herein until such time as the Department and the Grantee agree on a plan to remedy the deficiency.

5. LIAISON. \_\_\_\_\_, CDBG Project Supervisor, is the Department's liaison with the Grantee.

6. ACCESS TO RECORDS. The Grantee will maintain reasonable records of its performance and will allow access to these records at any time during normal business hours by the Department, the U.S. Department of Housing and Urban Development, the Controller General and, when required by law, the Montana Legislative Auditor and Legislative Fiscal Analyst. These records will be kept in the Grantee's offices in \_\_\_\_\_, Montana.

7. PERFORMANCE REPORTING. The Grantee will submit status reports on project performance at the request of, and in the format prescribed by, the Department.

8. AVOIDANCE OF CONFLICT OF INTEREST. No employee of the Department and no officer, member, employee or public official of the governing body of the localities in which the grant project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, may participate in any decision relating to this Contract which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested, or have any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

9. ASSURANCES. The Grantee will comply with the Statement of Assurances, as signed and submitted with the Grantee's CDBG application. The Grantee will also comply with all other applicable federal and state statutory and regulatory requirements, administrative directives issued by the Department, and local ordinances and resolutions. Any contracts entered into by the Grantee for the completion of the activities described in Section 3 hereof must contain special provisions requiring contractors to comply with all applicable assurances.

10. ARTICLES INCORPORATED BY REFERENCE. The Grantee's application for CDBG grant assistance, the applicable HUD regulations at 24 CFR Part 570, as now in effect or as they may be amended during the term of this Contract, and Title I of the Housing and Community Development Act of 1974, as amended, are incorporated in this Contract by this reference and are binding upon the Grantee.

11. MODIFICATION AND ASSIGNABILITY OF CONTRACT. This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this written Contract, are valid or binding. This Contract may not be enlarged, modified, or altered except upon written agreement, and does not imply any continuing commitment by the State of Montana beyond the termination date noted herein. The Grantee accepts responsibility for adherence to the terms of this Contract by subcontractor or subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions hereof.

12. SPECIAL CONDITIONS. (1) The Grantee will not obligate or utilize funds for any activities provided for by this Contract until:

- a) The Grantee completes an Environmental Review Record and the Department issues a Notice of Release of Funds.
- b) The Grantee submits to the Department evidence of the firm commitment of the other resources necessary for the completion of the project as defined in Section 3 hereof.

The Department may issue a letter to the Grantee providing for the incurring of specific administrative costs prior to the removal of the above conditions.

13. CONSTRUCTION AND VENUE. This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court of the First Judicial District in and for the County of Lewis and Clark, State of Montana.

14. INDEMNIFICATION. The Grantee waives any and all claims and recourse against the Department and the State of Montana, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this Contract except claims arising from the concurrent or sole negligence of the Department or its officers, agents, or employees.

Further, the Grantee will indemnify, hold harmless, and defend the Department and the State of Montana against any and all claims, demands, damages, costs, expenses, or liability arising out of this Contract except for liability arising out of the concurrent or sole negligence of the Department or its officers, agents, or employees. In the event the Department or the State of Montana is named as a codefendant in any action relating to activities to be performed under this Contract, the Grantee will notify the Department of such fact and will represent the Department in such legal action unless the Department undertakes to represent itself as a codefendant in such legal action in which case the Department will bear its own litigation costs, expenses, and attorneys' fees.

15. TERMINATION OF CONTRACT. This contract may be terminated as follows:

a) Termination Due to Loss of Funding

This Contract will terminate in whole or in part, at the discretion of the Department, in the event that the Department suffers a loss of funding or termination of the federal grant which permits it to fund in whole or in part the Grantee so that it is unable to make payment to the Grantee. In this event, the Department will give the Grantee written notice setting forth the effective date of full or partial termination or, if a change in funding is required, setting forth the change in funding and changes in the approved budget.

b) Termination for Cause

If the Department determines that the Grantee has failed to comply with the special conditions or the general terms and conditions of this Contract, and if upon notification of the defect the Grantee does not remedy the deficiency within a reasonable period of time to be specified in the notice, the Department may terminate this Contract in whole or in part at any time before the date of completion. The Department will promptly notify the Grantee in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination. Payments made to the Grantee or recoveries by the Department will be in accord with the legal rights and liabilities of the parties.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed.

(City, Town, or County  
of \_\_\_\_\_)

Department of Commerce

\_\_\_\_\_  
(Mayor, or all three  
County Commissioners)

\_\_\_\_\_  
Gary Buchanan, Director

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Nancy L. Leifer, Administrator  
Community Development Division

Date \_\_\_\_\_

\_\_\_\_\_  
DOC Fiscal Review

\_\_\_\_\_  
DOC Legal Review



ATTACHMENT A  
Project Schedule

A. PROJECT START-UP

- |                            |                |
|----------------------------|----------------|
| 1. Begin Project Planning  | October, 1983  |
| 2. Establish Project Files | October, 1983  |
| 3. Preparation of ERR      | November, 1983 |
| 4. Publish Notices         | November, 1983 |
| 5. Clear Release of Funds  | December, 1983 |

B. PROJECT IMPLEMENTATION

- |                                   |                 |
|-----------------------------------|-----------------|
| 1. Advertise Site for Sale        | December, 1983  |
| 2. Sale of Site to Developer      | January, 1984   |
| 3. Developer Mortgage Commitment  | January, 1984   |
| 4. Rehabilitate Project Start-up  | January, 1984   |
| 5. (2) Rehab Units Contracted     | February, 1984  |
| 6. Site Demolition Plans          | March, 1984     |
| 7. (2) Rehab Units Contracted     | March, 1984     |
| 8. Developer Plans Final          | April, 1984     |
| 9. Site Bid and Award             | April, 1984     |
| 10. (3) Rehab Units Contracted    | April, 1984     |
| 11. Developer Financing Secured   | May, 1984       |
| 12. Site Cleared and Ready        | May, 1984       |
| 13. (3) Rehab Units Contracted    | May, 1984       |
| 14. Begin New Rental Construction | June, 1984      |
| 15. (4) Rehab Units Contracted    | June, 1984      |
| 16. (4) Rehab Units Contracted    | July 1, 1984    |
| 17. (4) Rehab Units Contracted    | August, 1984    |
| 18. (4) Rehab Units Contracted    | September, 1984 |
| 19. Demolition Bid and Award      | October, 1984   |
| 20. (4) Rehab Units Contracted    | October, 1984   |
| 21. Demolition Work Completed     | November, 1984  |
| 22. (2) Rehab Units Contracted    | November, 1984  |
| 23. (1) Rehab Unit Contracted     | December, 1984  |
| 24. (1) Rehab Unit Contracted     | January, 1985   |
| 25. (2) Rehab Units Contracted    | February, 1985  |
| 26. Complete New Rental           | March, 1985     |
| 27. (2) Rehab Units Contracted    | March, 1985     |
| 28. New Rental Occupancy          | April, 1985     |
| 29. (2) Rehab Units Contracted    | April, 1985     |

C. PROJECT CLOSE-OUT

- |                                 |             |
|---------------------------------|-------------|
| 1. Begin Project Close-Out      | April, 1985 |
| 2. Project/Evaluation           | May, 1985   |
| 3. Project Audit                | May, 1985   |
| 4. Final Administration Payment | May, 1985   |
| 5. Close-Out Report Final       | June, 1985  |

ATTACHMENT B  
CDBG HOUSING PROJECT BUDGET

ADMINISTRATION

Personal Services  
(Includes all salaries;  
wages & fringe benefits) \$ \_\_\_\_\_  
Supplies  
    Office Supplies: (Small  
        items of equipment only)\* \_\_\_\_\_  
Purchased Services:  
    Postage, Printing  
        & Publications, etc. \$ \_\_\_\_\_  
    Audit \_\_\_\_\_  
    Legal \_\_\_\_\_  
    Other \_\_\_\_\_  
Consulting Services:  
    (List each Contract) \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Travel and Training: \_\_\_\_\_  
Rent: \_\_\_\_\_

Total CDBG Administrative Costs \$ \_\_\_\_\_

PROJECT

Acquisition/Demolition: \_\_\_\_\_  
Rehabilitation: \_\_\_\_\_

Total CDBG Program Costs \$ \_\_\_\_\_

TOTAL CDBG BUDGET \$ \_\_\_\_\_

---

TOTAL PROJECT BUDGET

TOTAL CDBG BUDGET \$ \_\_\_\_\_

OTHER RESOURCES:

FmHA Loan \$ \_\_\_\_\_  
CDBG Program Income \_\_\_\_\_  
etc. \_\_\_\_\_

TOTAL OTHER RESOURCES: \_\_\_\_\_

TOTAL PROJECT COST: \$ \_\_\_\_\_

\* If you intend to purchase any item which is considered a capital good as defined by your community (e.g. typewriter) please contact the CDBG liaison. These purchases require special accounting procedures outlined in OMB Circular A-87).

EXHIBIT I-C

CDBG CONTRACT FOR PUBLIC FACILITIES

NOTE: This is an example only. Each contract will require its own specific information.

COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT  
CONTRACT # MT-CDBG- 83-

This Contract is entered into by (City, Town or County of \_\_\_\_\_), Montana, herein referred to as "the Grantee" and the State of Montana Department of Commerce, Helena, Montana, herein referred to as "the Department."

WITNESSETH THAT the Grantee and the Department mutually agree as follows:

1. PURPOSE. The purpose of this Contract is to provide for funding for project activities approved by the Department under the Montana Community Development Block Grant Program for FY 1983.

2. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract takes effect on \_\_\_\_\_, 198\_. The activities to be performed by the Grantee will be completed no later than \_\_\_\_\_, 198\_.

A copy of the preliminary project schedule is included as Attachment A, which by this reference is made a part hereof. The Grantee will submit a final project schedule to the Department prior to the initiation of construction.

3. SCOPE OF ACTIVITIES AND LEVEL OF FUNDING. The Grantee will engage in activities for the project entitled the (name of community) \_\_\_\_\_  
\_\_\_\_\_. The major components of the project include:

- Installation of a chemical injector process to neutralize iron content;
- Remodeling of the water pump and treatment building to accommodate new system and automated pump;
- Extend main along Highway 89;
- Install fire main to school and install 3 hydrants;
- Install 23 hydrants at various locations;
- Eliminate all deadends by completion of loop system;
- Construct new 100,000 gal. water storage reservoir;
- Meter and connect all users to system; and
- Drill new well to insure yield.

The end product of these activities will be a new water supply, treatment, storage and distribution system for the district. The project will be constructed as described in Engineering Plans and Specifications to be submitted to and approved by the Water Quality Bureau, Montana Department of Health and Environmental Sciences.

The total amount of this Contract is not to exceed \$ \_\_\_\_\_.

A copy of the preliminary project budget is included as Attachment B to this Contract, and by this reference is made a part hereof. The Grantee will submit a final project budget to the Department following the award of the contract for construction. The final project budget will determine the actual amount of the grant award.

The Grantee is authorized to make adjustments between line items in Attachment B, in a total amount not to exceed five percent of the total Contract amount, without prior written approval from the Department as long as the transfers do not violate the conditions upon which the grant was awarded. However, transfers between the administration and project categories may be made only upon prior written approval by the Department.

4. COMPENSATION AND METHOD OF PAYMENT.
5. LIAISON.
6. ACCESS TO RECORDS.
7. PERFORMANCE REPORTING.
8. AVOIDANCE OF CONFLICT OF INTEREST.
9. ASSURANCES.
10. ARTICLES INCORPORATED BY REFERENCE.
11. MODIFICATION AND ASSIGNABILITY OF CONTRACT.
12. SPECIAL CONDITIONS.
13. CONSTRUCTION AND VENUE.
14. INDEMNIFICATION.
15. TERMINATION OF CONTRACT.

(Signatures by grantee and Department of Commerce.)

NOTE: The content of contract sections 4-15 listed above, along with format for required signatures, are the same as shown in the preceding Exhibit I-B. Section 12, Special Conditions, may vary from project to project.

ATTACHMENT A  
PRELIMINARY PROJECT SCHEDULE

- A. PROJECT START-UP
- |  |                |
|--|----------------|
| 1. Advertise administration services   | December, 1983 |
| 2. Award administrative contract   | January, 1984  |
| 3. Attend environmental workshop   | January, 1984  |
| 4. Begin preparation of ERR  | January, 1984  |
| 5. Implementation workshop   | February, 1984 |
| 6. Begin project planning  | February, 1984 |
| 7. Advertise for engineering services  | March, 1984    |
| 8. Award engineering services  | April, 1984    |
| 9. Begin preliminary engineering   | April, 1984    |
| 10. Publish ERR and notice of release  | April, 1984    |
| 11. Sign contracts between County and<br>the Department, engineer, and<br>project administration | June, 1984     |
| 12. Complete preliminary engineering report  | July, 1984     |
| 13. Clear release of funds   | July, 1984     |
- B. PROJECT IMPLEMENTATION
- |  |                 |
|--|-----------------|
| 1. Initial drawdown for engineering/<br>administration | July, 1984      |
| 2. Compliance reports                                  | July, 1984      |
| 3. DHES engineering review                             | July, 1984      |
| 4. Complete final plans and specifications             | August, 1984    |
| 5. Prepare & advertise bid for construction            | August, 1984    |
| 6. Bid opening   | September, 1984 |
| 7. Bid award   | September, 1984 |
- C. CONSTRUCTION
- |  |                               |
|--|-------------------------------|
| 1. Pre-contract meeting                      | September, 1984               |
| 2. Start construction on source development  | September, 1984               |
| 3. Start construction on distribution system | September, 1984               |
| 4. Inspection                                | September -<br>November, 1984 |
| 5. Compliance monitoring                     | September -<br>November, 1984 |
| 6. Complete all construction                 | November, 1984                |
| 7. Final inspection                          | November, 1984                |
| 8. Final payment to contractor               | November, 1984                |
| 9. In-service system training                | November, 1984                |
| 10. Final payment to engineer                | November, 1984                |
- D. PROJECT CLOSE-OUT
- |                                     |                |
|-------------------------------------|----------------|
| 1. Project close-out begins         | December, 1984 |
| 2. Project/evaluation               | December, 1984 |
| 3. Close-out report                 | December, 1984 |
| 4. Final payment for administration | December, 1984 |
| 5. Project audit                    | December, 1984 |

ATTACHMENT B  
CDBG PUBLIC FACILITIES BUDGET

ADMINISTRATION

Personal Services  
(Includes all salaries;  
wages & fringe benefits) \$ \_\_\_\_\_  
Supplies  
    Office Supplies: (Small  
        items of equipment only)\* \_\_\_\_\_  
Purchased Services:  
    Postage, Printing  
        & Publications, etc. \$ \_\_\_\_\_  
    Audit \_\_\_\_\_  
    Legal \_\_\_\_\_  
    Other \_\_\_\_\_  
Consulting Services:  
    (List each Contract) \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Travel and Training: \_\_\_\_\_  
Rent: \_\_\_\_\_  
  
Total CDBG Administrative Costs \$ \_\_\_\_\_

CONSTRUCTION

Acquisition: \_\_\_\_\_  
Engineering: \_\_\_\_\_  
Construction Activities:  
    (List by Contract) \_\_\_\_\_  
Contingencies: \_\_\_\_\_  
  
Total CDBG Construction Costs \$ \_\_\_\_\_

TOTAL CDBG BUDGET \$ \_\_\_\_\_  
\_\_\_\_\_

TOTAL PROJECT BUDGET

TOTAL CDBG BUDGET \$ \_\_\_\_\_

OTHER RESOURCES:

FmHA Loan \$ \_\_\_\_\_  
DNRC or CDBG Program \_\_\_\_\_  
Income \_\_\_\_\_  
Etc. \_\_\_\_\_

TOTAL OTHER RESOURCES: \_\_\_\_\_

TOTAL PROJECT COST: \$ \_\_\_\_\_  
\_\_\_\_\_

\* If you intend to purchase any item which is considered a capital good as defined by your community (e.g. typewriter) please contact the CDBG liaison. These purchases require special accounting procedures outlined in OMB Circular A-87).







EXHIBIT I-E

Preparation of Designation of Depositary Card

<u>Block Number</u>	<u>Instructions</u>
1.	Enter "Community Development Block Grants - Department of HUD".
2.	Enter name, address and zip code of depositary designated to receive federal funds.
3.	Leave blank.
4.	Enter name of recipient organization's bank account and/or number.
5.	Enter name of recipient organization. (City or Town of _____, or _____ County.)
6.	Enter complete address of recipient organization.
7.	Enter title of Executive Officer for recipient organization. (Mayor or Chairperson, County Commission)
8.	Signature of Executive Officer for recipient organization.
9.	Enter date form signed by Executive Officer of recipient organization.
10.	Enter name of recipient organization's bank account and/or number.
11.	Leave blank.
12.	Enter name of recipient organization's bank.
13.	Enter complete address of recipient organization's bank where federal funds will be wired.
14.	Enter title of authorized bank officer for recipient organization's bank.
15.	Enter signature of authorized bank officer for recipient organization's bank.
16.	Enter date form signed by authorized bank officer for recipient organization's bank.

NOTE: Two original copies should be completed. Mail one copy to the CDBG liaison and retain the other copy for your records. It is important that there are no erasures or corrections on either copy, or they will have to be redone before DOC can accept them.



## DESIGNATION OF DEPOSITARY FOR DIRECT DEPOSIT OF LOAN AND OR GRANT FUNDS

## SECTION I (To be Completed by recipient organization)

NAME OF PROGRAM

(1)

The (2)

(Name, Address and ZIP Code of Bank, or Local Government Treasury)

has been designated as the depository for all funds to be received directly from the U.S. Treasury Department

resulting from contract number (3) executed with the U.S. Department of Housing

and Urban Development for deposit to: (4)

(Account Name and/or Number)

(5)

(Name)

(6)

(Address and ZIP Code)

(7)

(Title of Executive Officer)

(8)

(Signature of Executive Officer)

(9)

(Date)

## SECTION II (To be completed by the depository)

The account identified in Section I has been established with this bank (or treasury as applicable). All necessary documentation, including a power of attorney where necessary, which will legally enable this depository to receive U.S. Government checks directly from the U.S. Treasury Department for deposit to:

(10)

(Account Name and/or Number)

without the payee's endorsement have been received and are in this depository's custody. This depository's deposits are insured by: (11)

(12)

(Name of Bank or Treasury)

(13)

(Address and ZIP Code where checks should be mailed)

The Depository hereby agrees to immediately notify the Recipient Organization when a deposit is made in the above account.

(14)

(Title of Authorized Bank Officer)

(15)

(Signature of Authorized Bank or Treasury Officer)

(16)

(Date)



# **Chapter II**

## **Environmental Review**



## CHAPTER II

### ENVIRONMENTAL REVIEW

#### OVERVIEW

This chapter discusses the requirements that CDBG grantees must follow to insure protection of the environment. The National Environmental Policy Act of 1969 (NEPA) establishes national policy, goals and procedures for protecting, restoring and enhancing environmental quality. Federal regulations for compliance with the environmental requirements of the Community Development Block Grant Program are found generally in 24 CFR Part 58 and 40 CFR Part 1500-1508. A copy of 24 CFR Part 58 is provided for your reference in the Requirements Notebook, along with a copy of other applicable federal environmental requirements. Regulations at 40 CFR Part 1500-1508 primarily pertain to environmental impact statements; a copy is available upon request to the CDBG liaison.

Additionally, the Montana program is subject to the Montana Environmental Policy Act (MEPA) of 1971. Although MEPA is similar to the federal legislation in terms of purpose and intent, there are some differences in procedures for complying with the State law. Therefore, it has been necessary to make some minor additions to the federal environmental review forms in order to assure that CDBG grantees meet both state and federal requirements through a single procedure. The Montana Department of Commerce (DOC), acting as the designated state agency responsible for reviewing and approving environmental assessments prepared by grantees, has established the following environmental review system for the Montana CDBG Program.

The environmental review is a critical aspect of grant administration. No project costs can be incurred or obligated and no funds can be released to grantees until the environmental requirements have been satisfied. Under federal regulations DOC may not release any funds to grantees until the recipient of a CDBG grant award certifies that an assessment of the project activities demonstrates no significant environmental impacts or that actions have been initiated that would mitigate such impacts to the extent practicable.

Each CDBG program must prepare and maintain a written record of the environmental review undertaken. This written record or file is called the Environmental Review Record (ERR) and must be available for public review. It must contain a description of the project and of each of its component activities, as well as any other documents, notices, information, and public comments received pertinent to the environmental review carried out by the grantee. Public comments and concerns, as well as their appropriate resolution by the grantee, are extremely important and must be fully documented in the ERR.

#### LOCAL RECIPIENT RESPONSIBILITIES

##### Step 1 -- Designate Environmental Certifying Officer

As the first step in the process, all grantees must designate in a letter to DOC a certifying official who is responsible for all activities associated with the environmental review. The certifying official may be any resident of the recipient jurisdiction and should be capable of defending any information provided to the public or DOC as part of the environmental review process. In some instances, a local government employee with technical expertise to conduct the review will receive this designation. In other cases, the local government may choose to designate a local elected official who is then responsible for monitoring the technical work performed by consultants or public employees and then signs off on the appropriate certifications.

Regardless of the approach taken, the designated certifying officer will be considered a federal official under 24 CFR 58.13 who is responsible for all of the environmental requirements, and who will represent the recipient in any litigation that might arise from challenges to compliance with environmental requirements. (Exhibit II-A provides a sample form for Designation of Environmental Certifying Officer.)



Step 2 -- Request Authorization to Incur  
Administrative Costs

If the grantee so desires, it may submit to DOC a request for authorization to incur administrative costs. However, only certain administrative costs can be authorized to be incurred, such as costs associated with completion of the ERR. Furthermore, it is important to note that expenditures for such costs will be borne by the grantee until reimbursement at a later date by DOC. As emphasized in Chapter I, reimbursement is contingent upon the grantee's completion of the ERR, release of funds by DOC, the grantee's development of a grant management plan, and the signing of a grant contract between the grantee and DOC. If all of these items are not completed, DOC cannot reimburse the local government for any costs incurred.

If the grantee elects to request from DOC authorization to incur administrative costs, the format in Exhibit II-B, Finding of Exemption for Reimbursable Activities/Request to Incur Administrative Costs should be followed. Exhibit II-B provides a cover letter and form for the request. Only the following activities can be included in the request. These activities are considered exempt under 24 CFR 58.34, and are defined as reimbursable by HUD under Section 570.200(h). Only costs for the following administrative activities can be incurred:

- Environmental studies or assessments required by 24 CFR Part 58;
- Preliminary engineering and design costs that may be necessary to determine project feasibility or project scope; and
- Administrative costs such as:
  - . bringing on administrative staff
  - . travelling to DOC workshops for CDBG training
  - . establishing an office (e.g., supplies, rent)
  - . publishing legal notices
  - . incurring other administrative expenses required for capacity building.

### Step 3 -- Determine if All Project Activities Are Exempt

Grantees do not have to comply with environmental requirements of NEPA or other applicable federal environmental laws if the entire project is determined to be exempt as defined under 24 CFR 58.34. Examples of exempt activities include:

- environmental studies;
- project planning;
- administrative costs;
- most engineering and design costs associated with eligible projects;
- interim assistance to respond to imminent threat or physical determination, provided that the assistance does not alter environmental conditions; and
- certain public service activities.

If all project activities are determined by the certifying official to be exempt under 24 CFR Part 58.34, the certifying official must prepare a Finding of Exemption (Exhibit II-C) which lists the exempt activities and cites the appropriate statutory authority. The Finding is then submitted to DOC and a copy is retained for the ERR file. DOC will then send a letter to the grantee concurring with this finding and releasing project funds. A copy of this letter must be retained in the ERR.

Most grants funded under the Montana CDBG Program involve activities in addition to those listed above as exempt, and will need to go to Step 4 for further instruction.

In the unlikely circumstance that your grant involves exempt activities only, the ERR file need only contain the exhibits listed below and all accompanying documentation and applicable correspondence to and from DOC, such as a letter of authorization to incur costs.

- Exhibit II-A - Designation of Environmental Certifying Officer; and
- Exhibit II-B - Finding of Exemption.

#### Step 4 - Determine if the Project is Categorically Excluded

Unless the project is documented in the ERR as being exempt, the grantee must determine if it is categorically excluded from NEPA requirements. To be considered categorically excluded, all activities must meet the definition contained in 24 CFR 58.35.

Examples of categorically excluded activities as defined in 24 CFR 58.35 include:

- acquiring facilities that are in place and will be retained for the same use;
- replacing or upgrading of facilities with only a minimal change in use , size, capacity or location;
- projects which will not change the use, size, capacity, or character of the site;
- projects involving fire protection equipment;
- projects which reduce or eliminate material and architectural barriers; and
- rehabilitation which does not increase population density by more than 20 percent, does not require a change in land use, residential class, or zoning, and costs less than 75 percent of the replacement cost following rehabilitation.

Although projects that are "categorically excluded" do not require preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), they remain subject to federal executive orders and other applicable laws and require completion of a Statutory Checklist and other forms. Additionally, MEPA requires preparation of a Preliminary Environmental Review (PER) prior to the release of funds by DOC. If DOC determines that there is some continuing impact that requires mitigation, DOC can direct the grantee to complete either an EA or an EIS.

If all of the project activities are classified as exempt or categorically excluded, follow the instructions below. However, if your project involves one or more activities which are neither exempt nor categorically excluded, an environmental assessment (EA) as described in Step 4 is required.

When the project activities are determined to be categorically excluded, the certifying official must prepare and submit to DOC a Finding of Categorical Exclusion (Exhibit II-D) which lists each activity identified as categorically excluded and gives the statutory authority for that determination.

MEPA requires the State agency, DOC, to make initial determinations of potential impacts on the physical environmental. A Preliminary Environmental Review (PER) (Exhibit II-E) must be completed and submitted to DOC for review. A copy must be retained in the grantee's ERR file.

While exempt from further federally mandated environmental review, the certifying official must present evidence that the project activities meet the environmental requirements contained in other applicable laws (24 CFR 58.35). This is achieved through the completion of the Statutory Checklist (See Exhibit II-F for the Statutory Checklist format and a listing of applicable federal laws and executive orders. The Requirements Notebook contains copies of these documents.) For each compliance factor (air quality, historic properties, etc.) the certifying official must determine whether the factor:

- is not applicable to the project;
- requires further consultation;
- requires additional review;
- requires issuance of a permit;
- requires permits and such permits have been obtained; or
- requires compliance with conditions and/or the undertaking of mitigation actions.

Situations which require additional consultation are those in which contact with the appropriate federal or federally authorized agency is necessary. The consultation can result in no further action or the placement of conditions on the grantee prior to the release of funds. If permits are required, a listing of the specific permits needed and the procedures by which they will be obtained should be attached to the Statutory Checklist. If mitigating actions are required, the certifying officer should describe the actions the grantee will take to assure compliance.

In conjunction with the Statutory Checklist, special attention must be paid to requirements related to floodplains and wetlands. The grantee must determine whether the project is in or will affect a floodplain. If so, the grantee must follow the Eight-Step Decision Making Process to achieve compliance. (See Exhibit II-G) If you need assistance in determining whether the project is located in or would affect a floodplain, see Exhibit II-G for the name and telephone number of the State agency to contact.

The authority for grantee responsibilities related to floodplains and wetlands appears in Executive Orders 11988 and 11990, respectively. These documents are included in the Requirements Notebook. If the project activities will be situated in floodplains or wetlands, the locality is required to publish two notices related to determination of the impact of the project in the local newspaper. In communities that do not have a local paper the notice should be posted in public buildings such as city hall, post offices, schools, and/or libraries. The first notice is called an Early Public Notice (for Floodplains and/or Wetlands, Exhibit II-H) which identifies the nature of the project activity and solicits comments for a period of a minimum of 16 days. The second notice, the Notice of Explanation (for Floodplains and/or Wetlands, Exhibit II-I), must be published a minimum of 16 days after the Early Public Notice and should include the determination as to the impacts of the proposed project and whether there are any reasonable alternatives to the proposed activity.

In conjunction with the Statutory Checklist, special attention must also be paid to requirements related to historic preservation. To comply with the National Historic Preservation Act of 1966 and Executive Order 11593, which are included in the Requirements Notebook, the certifying official should provide notice to the State Historical Preservation Officer (SHPO) indicating the nature of the project, local historic preservation surveys and solicitation of public comment, any potential areas of impact, and actions prescribed to mitigate the impacts. (Exhibit II-J provides a sample notice from the locality to the SHPO.) Be sure to include a cut-off date for response by the SHPO, generally 30 days. Additional guidance on meeting historic preservation requirements is provided in 36 CFR 800 - Protection of Historical and Cultural Properties. (Exhibit II-K, Historic Preservation Explanation, provides additional guidance for CDBG projects other than housing rehabilitation.)

Additional required steps involved for environmental clearance for projects that are categorically excluded are:

- Publication and distribution of a Notice of Intent to Request Release of Funds (NOI/RROF); and
- Submission of the Request for Release of Funds (RROF) and the Environmental Certification to DOC.

The NOI/RROF (Exhibit II-L) indicates the grantee's intention to submit to DOC a Request for Release of Funds no sooner than seven days following the publication of the notice. This gives the public at least seven days to submit comments to the grantee before any other action is taken, and establishes a minimum of 15 days during which the public may comment to DOC.

Seven days after the publication of the NOI/RROF, the locality should submit the RROF (Exhibit II-M) to DOC. The RROF also contains a Certification which must be signed by the Environmental Certifying Officer indicating that the environmental review has been conducted in the prescribed fashion.

In summary, for projects involving exempt and categorically excluded activities only, the ERR file must include exhibits included in the following list. All accompanying documentation, evidence of publication of notices, and any comments received with your responses must also be included as part of the ERR file. Also include a copy of applicable correspondence to and from DOC, such as a letter of authorization to incur costs (discussed in Step 2) and the release of funds (discussed at the end of this section). With the exception of furnishing copies of all of the documentation gathered and all of the comments received, most of the information contained in the ERR must be submitted to DOC. DOC may request that some or all of the documentation or comments be submitted, particularly in regard to floodplains and historic preservation.

The following must be sent to DOC:

- Exhibit II-A, Designation of Environmental Certifying Officer;
- If applicable, Exhibit II-B, Finding of Exemption for Reimbursable Activities/Request to Incur Administrative Costs;
- Exhibit II-C, Finding of Exemption;
- Exhibit II-D, Finding of Categorical Exclusion;
- Exhibit II-E, Preliminary Environmental Review (PER);
- Exhibit II-F, Statutory Checklist;
- If applicable, Exhibit II-G, Eight-Step Decision-Making Process; Exhibit II-H, Early Public Notice; and Exhibit II-I, Notice of Explanation;
- Exhibit II-J, Notice to State Historic Preservation Officer;
- Exhibit II-L, Notice of Intent to Request Release of Funds (NOI/RROF); and
- Exhibit II-M, Request for Release of Funds (RROF).



DOC will review the information listed above including the NOI/RROF and the RROF. If all of the required review periods as provided in the NOI/RROF have expired, and no basis for not releasing funds is found, DOC will send a letter of release of funds to the grantee. Assuming that the contract has been executed, a management plan has been developed, and the method of payment established, the grantee can then submit a drawdown request to DOC.

#### Step 5 - Preparation of An Environmental Assessment

If the grant involves one or more activities which are neither exempt nor categorically excluded, the grantee must prepare an Environmental Assessment (EA) as discussed in 24 CFR 58.36. (See Exhibit II-N for EA form. To assist you in the preparation of the EA, an Environmental Assessment Guideline is included in the Requirements Notebook.) Examples of grant activities which require preparation of an EA include:

- Rehabilitation which requires a change in land use;
- Demolition; and
- Installing public facilities such as a first-time community-wide sewage collection and treatment system.

The EA consists of the following components:

- project identification;
- project narrative;
- comparison with applicable plans;
- environmental assessment checklist, including special considerations under MEPA;
- summaries and conclusions, including assessment of alternatives, any additional studies performed, or mitigation measures needed; and
- level of clearance finding (such as the finding of no significant impact.)



The Summary of Environmental Conditions section of the EA should elaborate on those factors in the checklist where the certifying officer indicated that the project would have potentially adverse impacts. The "Assessment of Alternatives" should always include the option of not carrying out the project. Under this option, the certifying official should describe the impact on the community if the construction or improvements did not occur. A brief description of procedures by which the locality intends to obtain additional information should be provided under the section on "Additional Studies Needed or Performed." Likewise, a short narrative on actions chosen by the local grantee to resolve potential adverse impacts should be provided under "Mitigation Measures Needed."

Based on the information provided in the Environmental Assessment, the certifying official must make one of two findings. Either the project "...is not an action significantly affecting the quality of the human environment, and no Environmental Impact Statement (EIS) is required," or the project "...is an action significantly affecting the quality of the human environment, and an EIS is required."

If completion of the EA results in a finding of no significant impact the certifying official can proceed with preparing the notices and certifications required to remove the contract conditions related to environmental considerations. The Montana CDBG program uses a combined Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI/NOI/RROF) as provided for under 24 CFR 58.70. Under this procedure a minimum of 15 days for public comment must be provided at the local level. Copies of the FONSI/NOI/RROF (Exhibit II-0) must be provided by the certifying official to DOC.

As in the case of NOI/RROF for categorically excluded projects, if there is no general circulation newspaper in the locality, the notice must be prominently displayed in appropriate public buildings. The FONSI/NOI/RROF and evidence of publication and posting, including a distribution list of all agencies, groups, and individuals receiving a copy should be included in the ERR. Exhibit II-P lists the agencies and groups which 24 CFR 58.43 requires the grantee to provide with a copy of the FONSI/NOI/RROF.

At the end of the comment period extending a minimum of 16 days, the locality should submit a Request for Release of Funds and the Environmental Certifications (RROF) (Exhibit II-M) to DOC. After all of the required review periods have expired and DOC has reviewed the environmental information and found no basis for not releasing funds, DOC will send a letter of release of funds to the grantee. Assuming that the contract has been executed, a management plan has been developed, and the method of payment established, the grantee can submit a drawdown request to DOC.

The ERR file must include exhibits listed below, along with all accompanying documentation, evidence of notices of publication, and any comments received. A copy of applicable correspondence to and from DOC, such as a letter of authorization to incur administrative costs as discussed in Step 2 and the release of funds as discussed in Step 4 should be included.

Most of the information contained in the ERR must also be sent to DOC. However, it is usually not necessary to include a copy of all of the documentation and all of the comments received. DOC may request that some or all of the documentation or comments be submitted, particularly in regard to floodplains and historic preservation.

The following must be sent to DOC:

- Exhibit II-A, Designation of Environmental Certifying Officer;
- If applicable, Exhibit II-B, Finding of Exemption for Reimbursable Activities/Request to Incur Administrative Costs;
- Exhibit II-C, Finding of Exemption;
- If applicable, Exhibit II-G, Eight-Step Decision-Making Process; Exhibit II-H, Early Public Notice; and Exhibit II-I, Notice of Explanation;
- Exhibit II-J, Notice to State Historic Preservation Officer;
- Exhibit II-N, Environmental Assessment (EA) Form;

- Exhibit II-O, Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI/NOI/RROF);
- Exhibit II-M, Request for Release of Funds (RROF); and
- Exhibit II-P, FONSI/NOI/RROF Distribution List.

If there is a Finding of Significant Impact, immediately contact DOC for further instruction. DOC will work with the grantee directly to determine a course of action for fulfillment of the environmental requirements.

Even if there is a finding of no significant impact and an EIS is not required, there could be circumstances which cause the grantee to voluntarily prepare an EIS. For example, it may be advisable to do so for a very controversial project.

#### SUMMARY

It is important to remember the following:

1. The grantee cannot incur or obligate costs and DOC cannot release funds to the grantee until the environmental requirements have been satisfied. Step 1 of this chapter explains this in detail.
2. An Environmental Review Record (ERR) must be maintained for all projects.
3. An environmental certifying official must be designated for all projects, as discussed in Step 1.
4. If you need to incur costs to conduct certain administrative activities before the environmental review is complete and DOC releases funds, you must request authorization to incur these costs. Step 2 provides more detail.

5. Exempt projects do not need to satisfy environmental laws and regulations, but documentation that they are exempt must be maintained. Step 3 discusses exempt activities in greater detail.
6. Categorically excluded projects are exempt from NEPA but are not exempt from other applicable environmental laws and regulations. Step 4 explains the forms which must be completed, notices which must be published, time periods which must be allowed for public comment, and information which must be submitted to DOC.
7. Projects that are not exempt or categorically excluded must undergo a formal environmental review, either in the form of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). Step 5 explains the forms which must be completed, notices which must be published, time periods which must be allowed for public comment, and information which must be submitted to DOC.
8. If a Finding of No Significant Impact (FONSI) results, a FONSI notice must be prepared and disseminated in combination with a Notice of Intent for Request for Release of Funds (NOI/RROF) before funds may be released by DOC.

## CHAPTER II

### EXHIBITS

- II-A - Designation of Environmental Certifying Officer
- II-B - Finding of Exemption for Reimbursable Activities/Request to Incur Administrative Costs
- II-C - Finding of Exemption
- II-D - Finding of Categorical Exclusion
- II-E - Preliminary Environmental Review (PER)
- II-F - Statutory Checklist
- II-G - Eight-Step Decision Making Process
- II-H - Early Public Notice for (Floodplains and/or Wetlands)
- II-I - Notice of Explanation for (Floodplains and/or Wetlands)
- II-J - Notice to State Historic Preservation Office
- II-K - Historic Preservation Explanation
- II-L - Notice of Intent to Request Release of Funds (NOI/RROF)
- II-M - Request for Release of Funds (RROF)
- II-N - Environmental Assessment (EA) Form
- II-O - Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI/NOI/RROF)
- II-P - FONSI/NOI/RROF Distribution List



EXHIBIT II-A

DESIGNATION OF ENVIRONMENTAL CERTIFYING OFFICER

(Type on letterhead of grantee)

Date

Montana Department of Commerce  
Community Development Division, CDBG Program  
Capitol Station, Cogswell Building, Room C-211  
Helena, Montana 59620

The is to notify you that \_\_\_\_\_ (name) \_\_\_\_\_, \_\_\_\_\_ (title) \_\_\_\_\_  
is designated as the Environmental Certifying Officer responsible for  
all activities associated with the environmental review process to be  
completed in conjunction with the CDBG grant awarded to (name of  
grantee: City, Town or County of \_\_\_\_\_), Montana, for a (brief  
project description).

\_\_\_\_\_  
(signature\*)  
Typed name

\*NOTE: This should be signed by the chief elected official (mayor or  
chairperson of county commission.





EXHIBIT II-B

FINDING OF EXEMPTION FOR REIMBURSABLE ACTIVITIES/  
REQUEST TO INCUR ADMINISTRATIVE COSTS

(Type on letterhead of grantee)

Date

Montana Department of Commerce  
Community Development Division, CDBG Program  
Capitol Station, Cogswell Building, Room C-211  
Helena, Montana 59620

It is the finding of the (name of grantee: City, Town, County) of  
( ), Montana, that the following activities approved for  
funding under the Montana Community Development Block Grant program  
are defined as exempt under 24 CFR 58.34 of the Environmental Review  
Procedures for Title I Community Development Block Grant Programs, and  
that the costs associated in conducting these activities are defined  
as reimbursable by the Montana Department of Commerce:

(List applicable activities, for example:

1. Planning and Management Coordination
2. Environmental Review Activities
3. Engineering and Design Activities)

(For each activity listed above, provide a more detailed explanation  
of what the grantee intends to do. Examples include: travel expenses  
to attend training for CDBG grantees, install telephones, purchase  
office supplies, and publish notices for environmental review.)

(signature)

Typed Name

Environmental Certifying Officer

(Type of letterhead of grantee)

Date

Montana Department of Commerce  
Community Development Division, CDBG Program  
Capitol Station, Cogswell Building, Room C-211  
Helena, Montana 59620

The (name of grantee: City, Town or County) of ( ) hereby requests the Montana Department of Commerce to authorize the incurring of administrative costs described in the attached Finding of Exemption for Reimbursable Activities. I understand that in the event that the contract is not executed, the environmental review is not completed, or the Department of Commerce does not issue a release of funds for the grant, any costs incurred pursuant to the Department's authorization requested herein are the responsibility of the grantee and will not be reimbursed by the Department.

(signature)

Typed Name

Chief Elected Official

EXHIBIT II-C

FINDING OF EXEMPTION  
(Type on letterhead of grantee)

Date

Montana Department of Commerce  
Community Development Division, CDBG Program  
Capitol Station, Cogswell Building, Room C-211  
Helena, Montana 59620

It is the finding of the (name of grantee: City, Town, County) of  
(\_\_\_\_\_), Montana, that the following activities approved for  
funding under the Montana Community Development Block Grant program  
are defined as exempt under 24 CFR 58.34 of the Environmental Review  
Procedures for Title I Community Development Block Grant Programs.

(List applicable activities, for example:

1. Planning and management studies
2. Certain public service jobs

(signature)

Typed Name

Environmental Certifying Officer



EXHIBIT II-D

FINDING OF CATEGORICAL EXCLUSION  
(Type on letterhead of grantee)

Date

Montana Department of Commerce  
Community Development Division, CDBG Program  
Capitol Station, Cogswell Building, Room C-211  
Helena, Montana 59620

It is the finding of the (name of grantee: City, Town or County) of ( ), Montana, that the following activities approved for funding under the Montana CDBG program are defined as categorically excluded under 24 Part 58.35 of the Environmental Review Procedures for Title I Community Development Block Grant Programs, and that these activities are in compliance with the environmental requirements of related federal authorities. The activities and the statutory authority for exclusion are listed below:

(List applicable activities, descriptions, and authority. For example:

1. Second Street Improvements -- Paving of previously gravelled road.

Authority-- Section 58.35(a)(1): improvements replace or upgrade existing facilities.

2. Local Residential Rehabilitation Grant Program -- Rehabilitation of 15 owner-occupied, single-family homes.

Authority -- Section 58.35(a)(4): rehabilitation and improvements within the specified guidelines.)

Compliance with MEPA requirements are met through the preparation of the attached Preliminary Environmental Review. Compliance with the environmental requirements of other related federal authorities is indicated on the attached Statutory Checklist.

(signature)

Typed Name

Chief Elected Official



## Exhibit II-E

Date: \_\_\_\_\_

Montana Department of Commerce  
 Community Development Division, CDBG Program  
 Capitol Station, Cogswell Building, Room C-211  
 Helena, MT 59620

## PRELIMINARY ENVIRONMENTAL REVIEW

Grantee/Applicant \_\_\_\_\_

Contract #: \_\_\_\_\_

Project Name/Title \_\_\_\_\_

Description of Project \_\_\_\_\_

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POTENTIAL IMPACT ON PHYSICAL ENVIRONMENT

	Major	Moderate	Minor	None	Unknown	Comments on Attached Pages
1. Terrestrial & aquatic life and habitats						
2. Water quality, quantity and distribution						
3. Geology & soil quality stability and moisture						
4. Vegetation cover, quantity and quality						
5. Aesthetics						
6. Air quality						
7. Unique, endangered, fragile, or limited environmental resources						
8. Demands on environmental resources of land, water, air, and energy						
9. Historical and archaeological sites						

# POTENTIAL IMPACTS ON HUMAN ENVIRONMENT

	Major	Moderate	Minor	None	Unknown	Comments on Attached Pages
1. Social Structures and mores						
2. Cultural uniqueness and diversity						
3. Local and state tax base and revenues						
4. Agricultural or industrial production						
5. Human health						
6. Quantity and distribution of community and personal income						
7. Access to and quality of recreational and wilderness activities						
8. Quantity and distribution of employment						
9. Distribution and density of population and housing						
10. Demand for government services						
11. Industrial & commercial activity						
12. Demands for energy						
13. Locally adopted environmental plans & goals						
14. Transportation networks & traffic flows						

Other groups or agencies contacted or which may have overlapping jurisdiction \_\_\_\_\_

Individuals or groups contributing to this PER \_\_\_\_\_

Recommendations concerning preparation of EIS \_\_\_\_\_

PER Prepared by: \_\_\_\_\_

Date \_\_\_\_\_



Checklist of Applicable Statutes  
and Regulations

Project Name and Identification No. \_\_\_\_\_

**Statutory Checklist****Area of Statutory-Regulatory  
Compliance**(Precise citations for applicable  
statutes and regulations are printed  
on the back of this Checklist.)

Not Applicable to This Project

Consultation Required

Review Required

Permits Required

Determination of Consistency  
Approval, Permits Obtained  
Conditions and/or Mitigation  
Actions RequiredReference to Notes Providing  
Documentation Sources and  
Correspondence

Air Quality								
Historic Properties								
Floodplain Management								
Wetlands Protection								
Coastal Zone								
Water Quality - Aquifers								
Noise								
Endangered Species								

\*Attach evidence that required actions have been taken.

# Statutory Checklist

Checklist of Applicable Statutes  
and Regulations

## Permits, Licences, Forms of Compliances Under Other Laws

( FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS)

OTHER AREAS OF STATUTORY AND REGULATORY COMPLIANCE APPLICABLE TO PROJECT	<div> <div>Not Applicable to This Project</div> <div>Consultation Required</div> <div>Review Required</div> <div>Permits Required</div> <div>Determination of Consistency Approvals, Permits Obtained Conditions and/or Mitigation Actions Required</div> </div>							Reference to Notes Providing Documentation Sources and Correspondence
Water Quality								
Solid Waste Disposal								
Fish and Wildlife								
State or Local Statutes (to be added by local community:								

# Statutory Checklist

## Summary of Findings and Conclusions:

## Summary of Environmental Conditions:

## Project Modifications and Alternatives Considered:

# Statutory Checklist

## Checklist of Applicable Statutes and Regulations (Federal)

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### Noise

HUD Regulations (24 CFR Part 51, Subpart B)

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### Air Quality

Clean Air Act of 1970 as Amended (42 U.S.C. 7401-7642) EPA Regulation 40 CFR Part 50, and Partially 40 CFR Part 51, 52, 61.

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### Historic Properties

National Historic Preservation Act of 1966, Section 106 (16 U.S.C. 470 - 470 +)

Preservation of Historic and Archaeological Data Act of 1974 (16 U.S.C. 469-469c)

Executive Order 11593—Protection and Enhancement of the Cultural Environment

"Protection of Historic and Cultural Properties Under HUD Programs" (24 CFR Part 59) (When Issued)

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### Floodplain

Flood Disaster Protection Act of 1973 (PL 93-234) and Implementary Regulations

Title 24, Chapter X, Subchapter B, National Flood Insurance Program (44 CFR 59-75)

Executive Order 11988 and HUD Procedure for Floodplain Management (24 CFR Part 55) (When Issued)

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### Wetlands

Executive Order 11990, Protection of Wetlands and Applicable State Legislation or Regulations. Also 24 CFR Part 55 (When Issued)

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### Coastal Zone

Coastal Zone Management Act of 1972 as Amended (16 U.S.C. 1451-1464)

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### Water Quality

Federal Water Pollution Control Act, as Amended (33 U.S.C. 1251-1376)

Safe Drinking Water Act of 1974 (42 U.S.C. 300f-300j-10) as Amended

U.S. Environmental Protection Agency (EPA) Implementing Regulations 40 CFR Parts 100-149

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### Solid Waste Disposal

Solid Waste Disposal Act as Amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6987)

U.S. Environmental Protection Agency (EPA) Implementing Regulations 40 CFR Parts 240-265

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### Man-made Hazards

HUD Regulation (24 CFR Part 51, Subpart C (When Issued) HUD Notice 79-33) Indefinite Notice, September 10, 1979. Also 24 CFR Part 51 and Subpart D (When Issued)

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### Fish and Wildlife

Fish and Wildlife Coordination Act (16 U.S.C. 661-666c)

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### Endangered Species

Endangered Species Act of 1973 as Amended (16 U.S.C. 1531-1543)

Prepared By

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Date

Title

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EXHIBIT II-G

EIGHT-STEP DECISION-MAKING PROCESS

1. DETERMINE IF ACTION IS IN OR AFFECTS A FLOODPLAIN.

For information on floodplains or insurance, contact:

Montana Department of Natural Resources and Conservation  
Water Resources Division, Engineering Bureau  
Floodplain Management Section  
Capitol Station  
Helena, Montana 59620  
(406)444-6601

2. INVOLVE PUBLIC IN DECISION-MAKING PROCESS.

Refer to Exhibit II-H Early Public Notice for (Floodplains and/or Wetlands), regarding the public hearing to discuss the proposed project.

3. DETERMINE IF THERE IS A PRACTICABLE ALTERNATIVE.

4. IDENTIFY IMPACTS.

5. MITIGATE ADVERSE IMPACTS.

6. RE-EVALUATE ALTERNATIVES.

7. ANNOUNCE AND EXPLAIN DECISION TO THE PUBLIC.

Refer to Exhibit II-I, Notice of Explanation for (Floodplains and/or Wetlands), informing citizens of intent to undertake the project.

8. IMPLEMENT ACTION WITH APPROPRIATE MITIGATION.



EXHIBIT II-H

EARLY PUBLIC NOTICE FOR (FLOODPLAINS AND/OR WETLANDS)

Date of Publication of Notice

The (name of grantee: City, Town or County) of ( ), Montana, is considering a (describe proposed project, for example: housing rehabilitation program for residences along Second Avenue between Main Street and Broadway Street) as a CDBG project under the Montana CDBG program. The project is located in the 100 year floodplain. The (City, Town or County) is interested in discussing alternatives to this project and securing public perceptions of possible adverse impacts that could result from the project and possible minimization measures. A public hearing is scheduled on (date) to discuss the proposed project. Please attend or send written comments to: (name of Environmental Certifying Officer and complete mailing address). Comments will be received until (date, same as public hearing date).

(name)  
Environmental Certifying Officer

NOTE: A minimum of 16 days following the publication of the Early Public Notice, a Notice of Explanation (Exhibit II-I) must be published.





EXHIBIT II-I

NOTICE OF EXPLANATION FOR (FLOODPLAINS AND/OR WETLANDS)

Date of Publication of Notice<sup>1</sup>

The (name of grantee: City, Town, or County) of \_\_\_\_\_, Montana intends to undertake a project located in the 100 year floodplain. The project involves (describe proposed project and reasons to proceed, for example: housing rehabilitation of residences along Second Avenue between Main Street and Broadway Street. This program will provide improved housing conditions for 25 low and moderate income families. Proposed housing improvements cannot be undertaken in any other location as relocation costs would exceed available program resources. Failure to provide the rehabilitation assistance would result in the continued unsafe and unhealthy living conditions for the 25 families.)

It is the (City, Town's or County's) judgement that the proposed improvements outweigh consideration of Executive Order \_\_\_\_\_.

<sup>2</sup>. A more detailed description of the project and the FEMA flood maps are available for citizen review at (name of public office, such as City Hall or Planning Department, name of City or Town), Montana.

(Name) \_\_\_\_\_

Environmental Certifying Officer  
Complete Mailing Address \_\_\_\_\_

NOTES: <sup>1</sup> Publish a minimum of 16 days following publication of Early Public Notice (Exhibit II-H).

<sup>2</sup> For a situation involving floodplains, enter number 11988.  
For a situation involving wetlands, enter number 11990.



EXHIBIT II-J

NOTICE TO STATE HISTORIC PRESERVATION OFFICE

(Date)

State Historic Preservation Office  
Montana Historical Society  
225 North Roberts Street  
Helena, Montana 59601

Re: Consultation under 36 CFR 800.4(a)  
Community Development Block Grant Program

The (name of Grantee) has approval for a Montana Community Development Block Grant (CDBG) of (amount) from the Montana Department of Commerce. This grant will involve (include description of project, for example: replacing water lines, or providing housing rehabilitation grant assistance to low/moderate income families in 25 owner-occupied, single-family houses. The target area is Second Avenue between Main and Broadway Streets.

Pursuant to the procedures established by the Advisory Council on Historic Preservation (36 CFR Part 800) and adopted by the U.S. Department of Housing and Urban Development (HUD) for compliance with Section 106 of the National Historic Preservation Act of 1966 and Executive Order 11593, we have enclosed a vicinity map, general information and legal description of the proposed project.

We request that you review the enclosed data and notify us of any sites, structures or districts listed in or eligible for inclusion in the National Register of Historic Places which could be affected by the proposed undertaking. A determination of effect on any eligible property you list or we identify will be discussed with you at a later date.

To the best our knowledge there (are, or are no) structures or sites associated with the project which are of historic significance. (Discuss reasons for the above statement. For example, reasons for no significance might include, the site of the water main improvements has no historic significance as the initial grading of the present gravel road in 1912 would have destroyed any subsurface remains that existed. Or, the 25 units to be rehabilitated are single level, one and two bedroom frame units constructed between 1920 and 1930. As you can see from the representative photographs attached, these units are of little or no architectural interest and the local preservation society concurs that they are of no historic or cultural significance. I am attaching a copy of their letter for your information.)

Due to the limited processing time permitted by HUD regulations for this type of project, we request that you reply within 10 days from receipt of this letter. If we do not receive a reply within 30 days, we will assume that you know of no properties which are included in or eligible for inclusion in the National Register which may be affected by the proposed undertaking. Also, if we do not identify any cultural property during our review process, we will proceed with the project assuming that cultural resources have been adequately addressed.

Sincerely,

(signature)

Typed Name

Environmental Certifying Officer

Mailing Address

Telephone Number

## HISTORIC PRESERVATION EXPLANATION

HISTORIC PRESERVATION REQUIREMENTS: An Explanation for CDBG Recipients

- . They are a function of Federal law (National Historic Preservation Act of 1966) and regulation (36CFR800), not state regulations.
- . They outline a process for considering cultural resources in planning the use of Federal funds or making Federal decisions. A Federal agency can be sued for not fulfilling the procedures. They cannot be sued for a particular decision on whether or not to affect a cultural resource.
- . Three organizations outside the community office that receives CDBG funds participate in the process:

The State Historic Preservation Office  
 Montana Historical Society  
 225 North Roberts Street  
 Helena, MT 59620

Comments to local community office on known cultural resources, likelihood of cultural resources being there; value of resources found; impact of project on significant historic or prehistoric sites.

Jerry Rogers  
 Keeper of the National Register  
 National Register of Historic Places  
 National Park Service  
 Washington, D.C. 20240

Makes final decision on whether a property could be eligible for listing in the National Register of Historic Places.

Advisory Council on Historic Preservation  
 Mr. Louis Wall  
 730 Simms Street, Room 450  
 Golden, CO 80401

Makes final decision on impact of the project on a significant resource and on whether mitigation or consideration procedures have been adequate.

- . The process outlined in the regulations is best understood as having two components. Each component consists of answering a single major question, through answering of a series of smaller questions. In the majority of cases, the requirements are fulfilled at the completion of steps in the first component.

Prepared by SHPO  
 January 7, 1983

## HISTORIC PRESERVATION REQUIREMENTS: A QUESTIONNAIRE

- . In the 1982/83 round of grant awards, this questionnaire has been written solely for projects other than housing rehabilitation.
  - . Please read the "Historic Preservation Requirements: An Explanation for CDBG Recipients" first.
  - . The information that we will draw from answers to the following questions should take us through step 1.c. as described in the explanation.
  - . If the maps or information that we are seeking is clearly in your application materials, please direct us to that. However, our review of the applications did not usually produce information precise enough to end our review.
  - . Note that question #3 lets you use annotated maps to supply information needed in the first two questions if that is easier.
  - . We know that, in many cases, you will be affecting only ground surfaces that have experienced major disturbance in the past. Hence, your consideration of cultural resources can be concluded quickly. It is important, though, that the file indicates that you demonstrated that fact rather than assumed it.
- 
1. Please give the legal location of all land surfaces that might be affected by your project. Please mark those, if any, that fall within town limits.
  2. Please describe the condition/prior use of land surfaces that might be affected by the project. (farmed to \_\_\_ depth, used for grazing, graded city street since 1910, unimproved rural land, etc.)
  3. Please attach a map which illustrates or provides the information requested above.
  4. Have any prehistoric materials been found in the vicinity of your project to your knowledge?
  5. Does your project involve construction of buildings, dams, power poles, new dumpster yards (etc.--facilities which are clearly visible above-ground)? If so, will those new facilities be within site of buildings built prior to 1940. If so, again please describe the buildings (giving age, especially and/or provide polaroids of the buildings.

1/7/83

## FIRST COMPONENT

### Are significant historic or prehistoric properties likely to be affected by the project?

That question can be resolved by answering this series of smaller questions:

- a. Have any cultural resources (historic or prehistoric) been found in or close to the project area before? SHPO does a file search, based on request from CDBG office with legal location.
- b. If not, what is the likelihood of there being cultural resources in or near the project area?

SHPO comments based on information from CDBG office about age of buildings if they are involved or degree of previous ground disturbance if dealing with changes to ground areas.

- c. Does an archaeologist or historian need to survey the area?

SHPO recommendation.

Agency makes the decision, with decision needing to be defensible to professionals and public.

- d. If cultural resources exist in the project area (identified by someone much earlier or through survey information just gathered) are they significant?

CDBG office comments.

SHPO office comments.

If either office thinks they are significant, CDBG office requests the opinion of the Keeper of the National Register, on whether the property would likely be eligible for listing in the National Register.

This step is completed when CDBG office has either a letter from SHPO agreeing that there are no properties in the area which are likely to be National Register eligible or a letter from the Keeper of the National Register evaluating the eligibility of any properties which were found in the project area.

## SECOND COMPONENT

What is the effect of the project on significant (Register eligible) cultural resources?

The regulations offer three answers to that question: no effect, no adverse effect, or adverse effect.

Again, the major question is resolved by working through a series of smaller questions.

- a. Will the project change any of the qualities that make the cultural property significant?

CDBG office comments.

SHPO office comments.

If both agree that there will be no effect, the process has been completed. (For instance, a sewer line running down the alley behind a historically significant house would not likely affect the qualities that make the house important.)

- b. If the project looks as if it might affect the qualities that make the property significant, can the impact be handled in such a way that the effect need not be adverse?

CDBG office comments and offers suggestions for insuring no adverse effect.

SHPO office comments .

Advisory Council on Historic Preservation concurs in or disagrees with measures to avoid adversity.

For instance, window changes to an eligible house will affect the architectural qualities of the house that contribute to its value, but can be treated as having no adverse effect if they are handled so as to retain primary original appearance. Changes to a prehistoric site can be treated as having no adverse effect if a plan for retrieving significant historic materials is executed prior to disturbance.

- c. If an adverse effect appears likely to occur (demolition of historic buildings, etc.) what actions can be taken to minimize adversity or at least record property value before loss?

CDBG offer proposals in the form of a case report.

SHPO office comments.

Advisory Council determines whether mitigation or consideration measures are adequate.



EXHIBIT II-L

NOTICE OF INTENT TO REQUEST A RELEASE OF FUNDS (NOI/RRDF)

Date of Publication of Notice

(Name of grantee: City, Town or County of \_\_\_\_\_ )  
(Mailing Address) \_\_\_\_\_  
(City, Montana Zip) \_\_\_\_\_

(telephone number of grantee) \_\_\_\_\_

TO ALL INTERESTED AGENCIES, GROUPS AND PERSONS:

On or about (date\*), the above-named (City, Town, or County) will request the Montana Department of Commerce to release funds under Title I of the Housing and Community Development Act of 1974, as amended, (PL93-383) for the following project:

(for example, Second Avenue Housing Rehabilitation Program)  
(PROJECT, TITLE OR NAME)

(for example, rehabilitation of 25 owner-occupied, single-family homes)  
(PURPOSE OR NATURE OF PROJECT)

(for example, Second Avenue between Broadway Street and Main Street, name of City and County, Montana)  
(LOCATION--CITY, COUNTY, STATE)

(for example, \$400,000)  
(ESTIMATED COST OF PROJECT)

An Environmental Review Record documenting review of all project activities in respect to impacts on the environment has been made by the above-named (City, Town, or County). This Environmental Review Record is on file at the above address and is available for public examination or copying, upon request.

The (City, Town, or County of \_\_\_\_\_) will undertake the project described above with Community Development Block Grant funds provided by the Montana Department of Commerce, under Title I of the Housing and Community Development Act of 1974, as amended. The (City, Town, or County of \_\_\_\_\_) is certifying to the Department of Commerce that the (City, Town, or County of \_\_\_\_\_) and (Mayor \_\_\_\_\_ or Commissioner \_\_\_\_\_), in his or her official capacity as (Mayor or Chairperson of the County Commission), consent to accept the jurisdiction of the federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision-making, and action; and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval, the (City, Town, or County) may use the CDBG funds, and

the Department of Commerce will have satisfied its responsibilities under the Environmental Policy Act of 1969 as delegated to the State of Montana through the 1981 Amendments to the Housing and Community Development Act. The Department of Commerce will accept an objection to its approval of the release of funds and acceptance of the certification only if it is on one of the following bases: (a) The the certification was not in fact executed by the chief executive officer or other officer approved by the Department of Commerce; or (b) that the applicant's environmental review record for the project indicates omission of a required decision, finding, or step applicable to the project in the environmental review process. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and may be addressed to the CDBG Program Staff, Department of Commerce, Capitol Station, Cogswell Building, Room C-211, Helena, Montana 59620.

Objections to the release of funds on bases other than those stated above will not be considered by the Department of Commerce. No objection received after (Date\*\*) will be considered by the Department of Commerce.

Mayor or Commissioner

City or Town Hall or County Courthouse

, Montana Zip

(Name and Address of Chief Executive Officer of Applicant)

NOTES:     \*This date must be a minimum of eight days following the Date of Publication.

      \*\*This date must be a minimum of 16 days following the anticipated date that the grantee will request release of funds from the Department of Commerce as provided for in Paragraph One of this Notice. It is advisable to allow 18 or 19 days to allow several days for mailing time.

Exhibit II-M

MONTANA DEPARTMENT OF COMMERCE  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

**REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION (RROF)**

(Pursuant to Section 104(f) of Title I of the Housing and  
Community Development Act of 1974 as Amended)

**ENVIRONMENTAL**

<b>1. NAME OF GRANTEE</b>	<b>2. GRANT NUMBER</b>
<b>3. ADDRESS</b> (include Street, City, State, ZIP Code)	<b>4. REQUEST DATE</b>

5. **REQUEST FOR RELEASE OF FUNDS.** Release of approved grant funds for the following project is requested:

**PROJECT**

**GRANTEE**

(If Other Than Applicant)

6. **CERTIFICATION.** With reference to the above project, I the undersigned officer of the applicant, certify:

That the applicant has at least seven (7) days prior to submitting this request for release of funds and certification, published and disseminated, in the manner prescribed by 24 CFR 58.16(b), a notice to the public (a copy of which is attached) in accordance with 24 CFR 58.30(a);

That the applicant has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project named above; that the applicant has complied with the National Environmental Policy Act of 1969; that the applicant has complied with environmental procedures, permit requirements and the statutory obligations of the laws cited in 24 CFR 58.5(a)(2); and that the applicant has taken into account the environmental criteria, standards, permit requirements and other obligations applicable to the project under the other related laws and authorities cited in 24 CFR 58.1(a)(3);

That the level of environmental clearance carried out by applicant in connection with this project ( ) did ( ) did not require the preparation and dissemination of an environmental impact statement;

That the dates upon which all statutory and regulatory time periods for review, comment, or other response or action in regard to this clearance began and ended as indicated below, applicant is in compliance with the requirements of 24 CFR Part 58;

ITEM	COMMENCE MO/DAY/YR	EXPIRE MO/DAY/YR
Notice of No Significant Impact: Publication	_____	_____
Same: Comment Period	_____	_____
Notice of Intent to Prepare EIS: Publication	_____	_____
Draft EIS:Comment Period	_____	_____
Same: 90-day period (NEPA Regulations)	_____	_____
Final EIS: 30-day period (NEPA Regulations)	_____	_____
7-Day Notice of Intent to Request Release of Funds: Publication	_____	_____
15-day DOC Decision Period	_____	_____
Other (Specify)	_____	_____

That I am authorized to, and do, consent to assume the status of responsible federal officer under the National Environmental Policy Act of 1969 and each provision of law specified in 24 CFR 58.1(a)(3) insofar as the provisions of these laws apply to state and federal responsibilities for environmental review, decisionmaking and action assumed and carried out by the applicant; that by so consenting, I assume the responsibilities, where applicable, for the conduct of environmental review, decisionmaking, and action as to environmental issues, preparation and circulation of draft, final and supplemental environmental impact statements, and assumption of lead agency or cooperating agency responsibilities for preparation of such statements on behalf of State and Federal agencies, when these agencies consent to such assumption.

That I am authorized to consent to, and do, accept on behalf of the applicant and personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in my official capacity as certifying officer of the applicant.

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(Signature, Title and Address of Certifying  
Officer)

**WARNING — Section 1001 of Title 18 of the United States Code and Criminal Procedures shall apply to this certification. Title 18 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in matter with the jurisdiction of any department of agency of the United States, shall be fined not more than \$10,000 or imprisoned not more than five years or both.**



Exhibit II-~~W~~

ENVIRONMENTAL ASSESSMENT FORM

Project Identification

Recipient: (City, Town, or County of \_\_\_\_\_) Date: (Submitted)

Chief Elected Official:

Contract #: (As provided by Montana DOC)

Project Name: (Ex: \_\_\_\_\_ Water Distribution System)

Project Narrative

Should include the following:

Brief description of activity including construction and end-product  
Scheduled construction timeframe  
Purpose of project (Ex: replacement of deteriorating facility)  
Project funding from all sources  
Project plans and studies conducted  
Public review process  
Description of project site (with attached map)  
    including geology and previous use  
Description of surrounding areas

Comparison with Applicable Plans

Factor	Project Is...		
	In Compliance Yes	No	Not Applicable
Local Comprehensive Plans Including Land Use and Growth Management Elements	_____	_____	_____
Area and Regional Plans	_____	_____	_____
Local Zoning Ordinances	_____	_____	_____

# Environmental Assessment

## Environmental Assessment Checklist

Project Name and Identification No. \_\_\_\_\_

Impact Categories	1 <i>No Impact Anticipated</i>	2 <i>Potentially Beneficial</i>	3 <i>Potentially Adverse Requires Documentation Only</i>	4 <i>Potentially Adverse Requires More Study Needs Mitigation</i>	5 <i>Requires Project Modification</i>	6	7	Source or Documentation (Note date of contact or page reference) Additional material may be attached.
<b>Land Development</b>								
Conformance With Comprehensive Plans and Zoning (1)								
Compatibility and Urban Impact								
Slope								
Erosion								
Soil Suitability								
Hazards and Nuisances, Including Site Safety								
Energy Consumption								
<b>Noise</b>								
Effects of Ambient Noise on Project and Contribution to Com- munity Noise Levels								



# Environmental Assessment Checklist

(continued, page 2)

Project Name and Identification No. \_\_\_\_\_

Impact Categories	1 No Impact Anticipated	2 Potentially Beneficial	3 Potentially Adverse Requires Documentation Only	4 Potentially Adverse Requires More Study Needs Mitigation	5 Requires Project Modification	6	7	Source or Documentation (Note date of contact or page reference) Additional material may be attached.
<b>Air Quality</b> Effects of Ambient Air Quality on Project and Contribution to Com- munity Pollution Levels								
<b>Environmental Design and Historic Values</b> Visual Quality— Coherence, Diversity, Compatible Use, and Scale								
Historic, Cultural, and Archaeological Resources								
<b>Socioeconomic</b> Demographic/ Character Changes								
Displacement								
Employment and Income Patterns (2)								
<b>Community Facilities and Services</b> Educational Facilities								
Commercial Facilities								
Health Care								
Social Services								

# Environmental Assessment Checklist

(continued, page 3)

Project Name and Identification No. \_\_\_\_\_

		1	2	3	4	5	6	7
		No Impact Anticipated	Potentially Beneficial	Potentially Adverse Requires Documentation Only	Potentially Adverse Requires More Study	Needs Mitigation	Requires Project Modification	
Impact Categories		Source or Documentation (Note date of contact or page reference) Additional material may be attached.						
Community Facilities and Services (Continued)								
Solid Waste								
Waste Water								
Storm Water								
Water Supply								
Public Safety Police								
Fire								
Emergency Medical								
Open Space and Recreation	Open Space (3)							
	Recreation (3)							
	Cultural Facilities							
Transportation								

# Environmental Assessment Checklist

(continued, page 4)

Project Name and Identification No. \_\_\_\_\_

Impact Categories	1 No Impact-Anticipated	2 Potentially Beneficial	3 Potentially Adverse Requires Documentation Only	4 Potentially Adverse Requires More Study Needs Mitigation	5 Requires Project Modification	6	7
<b>Natural Features</b>							
Water Resources & Aquifers							
Surface Water							
Floodplains							Indicate where floodplain map is on file.
Wetlands							
Coastal Zone							
Unique Natural Features and Agricultural Lands (1)							
Vegetation and Wildlife, Fish, (3) Endangered Species							

## SPECIAL IMPACT CONSIDERATIONS AS REQUIRED UNDER THE MONTANA ENVIRONMENTAL POLICY ACT

(1) Special attention should be paid to impacts on Agricultural/Industrial Production.

(2) Consideration of this factor must specifically address the impacts on Local/State Tax Base and Revenues.

(3) In reviewing these factors, also address the extent to which the project activities impact on access to as well as the quality of recreational and wilderness activities.

**Environmental  
Assessment Checklist**  
(continued, page 5)

**Summary of Findings  
and Conclusions:**

**Summary of  
Environmental  
Conditions:**

**Project Modifications  
and Alternatives  
Considered:**

**Environmental  
Assessment Checklist**

(continued, page 6)

**Additional Studies  
Performed (Attach  
Study or Summary)**

**Mitigation Measures  
Needed:**

## page

1. Is project in compliance with applicable laws and regulations? ☐ Yes ☐ No

3. A Finding of No Significant Impact (FONSI) can be made. Project will not significantly affect the quality of the human environment. ☐ Yes ☐ No

Title

Date \_\_\_\_\_

**ENVIRONMENTAL ASSESSMENT CHECKLIST**

Page \_\_\_\_\_

**Level of Clearance Finding:**

Based on the foregoing environmental review, it is concluded that:

- ( ) FINDING: A request to the Montana Department of Commerce for release of funds for the within project is not an action significantly affecting the quality of the human environment, and no EIS is required.
  
- ( ) FINDING: A request to the Montana Department of Commerce for release of funds for the within project is an action significantly affecting the quality of the human environment, and an EIS is required.

Prepared by:

Name (Typewritten): \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

# Checklist of Applicable Statutes and Regulations

(continued, page

## Noise

HUD Regulations (24 CFR Part 51, Subpart B)

## Air Quality

Clean Air Act of 1970 as Amended (42 U.S.C. 7401-7642) EPA Regulation 40 CFR Part 50, and Partially 40 CFR Part 51, 52, 61.

## Historic Properties

National Historic Preservation Act of 1966, Section 106 (16 U.S.C. 470 - 470 - 1)

Preservation of Historic and Archaeological Data Act of 1974 (16 U.S.C. 469-469c)

Executive Order 11593—Protection and Enhancement of the Cultural Environment

"Protection of Historic and Cultural Properties Under HUD Programs" (24 CFR Part 59) (When Issued)

## Floodplain

Flood Disaster Protection Act of 1973 (PL 93-234) and Implementary Regulations

Title 24, Chapter X, Subchapter B, National Flood Insurance Program (44 CFR 59-75)

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## Wetlands

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## Coastal Zone

Coastal Zone Management Act of 1972 as Amended (16 U.S.C. 1451-1464)

## Water Quality

Federal Water Pollution Control Act, as Amended (33 U.S.C. 1251-1376)

Safe Drinking Water Act of 1974 (42 U.S.C. 300f-300j-10) as Amended

U.S. Environmental Protection Agency (EPA) Implementing Regulations 40 CFR Parts 100-149

## Solid Waste Disposal

Solid Waste Disposal Act as Amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6987)

U.S. Environmental Protection Agency (EPA) Implementing Regulations 40 CFR Parts 240-265

## Man-made Hazards

HUD Regulation (24 CFR Part 51, Subpart C (When Issued) HUD Notice 79-33) Indefinite Notice, September 10, 1979. Also 24 CFR Part 51 and Subpart D (When Issued)

## Fish and Wildlife

Fish and Wildlife Coordination Act (16 U.S.C. 661-666c)

## Endangered Species

Endangered Species Act of 1973 as Amended (16 U.S.C. 1531-1543)

Prepared By

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Date

Title

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EXHIBIT II-0

COMBINED NOTICE  
NOTICE OF FINDING OF NO SIGNIFICANT IMPACT and  
NOTICE TO PUBLIC OF REQUEST FOR RELEASE OF FUNDS  
(FONSI/NOI/RROF)

Date of Publication of Notice

\_\_\_\_\_  
(City, Town or County)

\_\_\_\_\_  
(Mailing Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone)

TO ALL INTERESTED AGENCIES, GROUPS AND PERSONS:

On or about (date)\* the above-named (City, Town, or County) will request the Montana Department of Commerce to release funds provided under Title I of the Housing and Community Development Act of 1974, as amended (PL 93-383) for the following project:

\_\_\_\_\_  
(Project Title or Name)

\_\_\_\_\_  
(Purpose or Nature of the Project)

\_\_\_\_\_  
(Location -- City, County, State -- of Project)

\_\_\_\_\_  
(Census Tract(s))

Finding of No Significant Impact

It has been determined that such request for release of funds will not constitute an action significantly affecting the quality of the human environment and accordingly the above named (City, Town, or County) has decided not to prepare an Environmental Impact Statement under the National Environmental Policy Act of 1969 (PL 91-190).

NOTE: \_\_\_\_\_  
\*Earliest date for submittal of REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION (Exhibit 2-M) is one day after termination of public comment period set for the Finding of No Significant Impact.

The reasons for such decision not to prepare such Statement are as follows:

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(Set forth reasons for decision.)

An Environmental Review Record documenting review of all project activities in respect to impacts on the environment has been made by the above-named (City, Town, or County). This Environmental Review Record is on file at the above address and is available for public examination and copying upon request between the hours of \_\_\_\_\_ and \_\_\_\_\_.

No further environmental review of such project is proposed to be conducted prior to the request for release of CDBG project funds.

#### Public Comments on Findings

All interested agencies, groups and persons disagreeing with this decision are invited to submit written comments for consideration by the (City, Town, or County) to the (office of the undersigned/other specified place) on or before (date\*). All such comments so received will be considered and the (City, Town, or County) will not request release of funds or take any administrative action on the project prior to the date specified in the preceding sentence.

#### Release of Funds

The (City, Town, or County of \_\_\_\_\_) will undertake the project described above with CDBG funds provided by the Montana Department of Commerce (DOC) under Title I of the Housing and Community Development Act of 1974, as amended. (City, Town, or County) is certifying to DOC that (City, Town, or County and chief executive officer/other certifying official as approved by DOC), in his or her official capacity as (office) consent to accept the jurisdiction of the Federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision-making, and action; and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval, the (City, Town, or County of \_\_\_\_\_) may use the CDBG funds and DOC will have satisfied its responsibilities under the National Environmental Policy Act of 1969.

#### Objections to State Release of Funds

DOC will accept an objection to its approval only if it is on one of the following bases: (a) that the certification was not in fact executed by the certifying officer or other officer of applicant approved by DOC; or (b) that the applicant's environmental review record for the project indicates omission of a required decision,

NOTE: \*A minimum of 16 days after publication of this notice.

finding, or step applicable to the project in the environmental review process. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and may be addressed to: Department of Commerce, Community Development Division, Cogswell Building, Room C-211, Capitol Station, Helena, Montana 59620.

Objections to the release of funds on bases other than those stated above will not be considered by the Department of Commerce. No objection received after (date\*) will be considered by DOC.

\_\_\_\_\_  
(Name of Certifying Officer)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, County, State, Zip Code)

NOTE: \_\_\_\_\_  
\*Estimate this date as a minimum of 16 days after the date that the Grantee anticipates DOC will receive the request. See 24 CFR Part 58.31. It is advisable to allow 18 or 19 days to allow several days for mailing time.



EXHIBIT II-P

NOTICE OF FINDING OF NO SIGNIFICANT IMPACT/  
NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS  
(FONSI/NOI/RRF)

DISTRIBUTION LIST

The combined Notice of Finding of No Significant Impact/Notice of Intent to Request Release of Funds was:

- \*Published at least once in the:  
    (name of newspaper) \_\_\_\_\_, \_\_\_\_\_,  
    Montana. OR Prominently displayed at the (name of  
    post/office)
- \*Prominently displayed at the following other public  
    buildings: (list names and locations)
- Sent to the following agencies and individuals:  
    (Examples include:)
  - \*Montana Department of Commerce  
    Helena, Montana 59620
  - \*Montana Environmental Quality Council  
    Helena, Montana 59620
  - Montana Department of Health and Environmental Sciences  
    Helena, Montana 59620
  - State Historic Preservation Officer  
    Helena, Montana 59620
  - \*U.S. Environmental Protection Agency  
    Regional Office  
    Denver, Colorado
  - \*U.S. Environmental Protection Agency  
    National Headquarters  
    Washington, D.C.
  - \*Individuals and groups known to be interested in the  
    activities.
    - Local Planning Departments
    - Local Preservation Society
    - Universities

NOTE: 24 CFR 58.43 provides that at a minimum, the distribution of the notice includes those indicated by an asterisk (\*).



# **Chapter III**

## **Procurement Standards**





### CHAPTER III

#### PROCUREMENT STANDARDS

This chapter provides standards for use by grantees in establishing procedures for the procurement of supplies, equipment, construction, and professional or other services with Montana CDBG program funds. These standards are furnished to insure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable federal and State laws and regulations.

OMB Circular A-102 Attachment O, is adopted by reference for the Montana CDBG program. Attachment O directs that supplies, equipment, construction and services be acquired efficiently and economically, through open and fair competitive awards. Grantees are to use sound business judgment, not only in the acquisition of supplies, equipment, construction and services, but in the settlement of all contractual and administrative issues, protests, disputes, and claims. Circular A-102 is included in the Requirements Notebook.

The grantee is the responsible authority under its contracts, and without recourse to the Department of Commerce regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with a CDBG program. Matters concerning violation of law are to be referred to such local, State or federal authority as may have proper jurisdiction. However, grantees are encouraged to contact DOC for assistance in any procurement matter.

#### PROCUREMENT REGULATIONS

Recipients may use their own procurement regulations which reflect applicable federal, State and local law, rules and regulations provided that all procurements made with CDBG funds meet the following standards:

### Conflict of Interest

The recipient must maintain a written code or standards of conduct to govern the performance of its officers, employees or agents in contracting with and expending CDBG funds. The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. No employee, official or agent of the grantee can participate in selection or award of administration of a contract supported by CDBG funds if a conflict of interest, real or apparent, would be involved. Pursuant to Title 1, Chapter 2; Title 2, Chapter 2; Title 7, Chapter 3; Title 7, Chapter 5, MCA and Attorney General Opinions Volume 37, No. 104; Volume 38, No. 55; and Volume 40, No. 78. Such conflict arises when:

- the employee, officer or agent;
- any member of the immediate family;
- his or her partner; or
- an organization which employees, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officials, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permissible by State or local law, rules or regulations, the grantee's standards must provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the grantee's officers, employees, or agents, or by contractors or their agents. Additional information is provided in the conflict of interest section of Chapter I.

### Small and Minority Businesses

It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized where possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- including qualified small and minority businesses on solicitation lists;
- assuring that small and minority businesses are solicited whenever they are potential sources;
- when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation;
- where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business;
- using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Montana Department of Highways and the CDBG staff as required;
- if any subcontracts are to be let, requiring the prime contractor to take the affirmative steps described above;
- grantees shall take similar appropriate affirmative action in support of women's business enterprises; and
- Grantees are encouraged to procure goods and services from labor surplus areas.

### Maximum Open and Free Competition

All procurement transactions entered into by the grantee regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition, as provided by OMB Circular 102,

Attachment O. The grantee must be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. Examples of what is considered to be restrictive of competition include, but are not limited to:

- placing unreasonable requirements on firms in order for them to qualify to do business,
- non-competitive practices between firms,
- organizational conflicts of interest, and
- unnecessary experience and bonding requirements.

#### Selection Procedures

Grantees must have written selection procedures in their files which provide, as a minimum, the following procedural requirements. Solicitation of offers, whether by competitive sealed bids or competitive negotiation, must:

- incorporate a clear and accurate description of the technical requirements for the materials, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, set forth minimum essential characteristics and standards to which it must conform to be satisfactory. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other important requirements of a procurement. The specific features of the named brand which must be met by offerors must be clearly stated; and

-- clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Awards shall be made only to responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Proposed procurement actions must be reviewed by recipient officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis must be made of lease and purchase alternatives to determine which would be most economical and practical procurement. Consideration should be given to consolidation or breaking out to obtain a more economical purchase.

To foster greater economy and efficiency, grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

Grantees must perform some type of cost or price analysis in connection with every procurement action including contract modifications and must only permit allowable costs to be included. The cost plus a percentage of cost method of contracting shall not be used.

Grantees must maintain records sufficient to detail the significant history of a procurement. These records must include, but are not necessarily limited to, information pertinent to rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

Grantees must maintain a contract administration system that insures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

## METHODS OF PROCUREMENT

There are four methods of procurement which can be used by grantees if authorized by locally adopted standards. (Also see Exhibit III-A, Types of Procurement Methods.)

### Small Purchase Procedures

Small Purchase Procedures can be used for procurements under \$10,000 and which require that price or rate quotations be obtained from an adequate number of qualified sources. There quotations should be clearly documented in the grantee's files.

### Competitive Sealed Bids (Formal Advertising)

This method is appropriate where sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lower in price. In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

- a complete, adequate and realistic specification or purchase description is available;
- two or more responsible suppliers are willing and able to compete effectively for the grantee's business; and
- The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

If formal advertising is issued for a procurement under a grant, the following requirements apply:

- a sufficient time prior to the date set for opening of bids, bids must be solicited from an adequate number of known suppliers. In addition, the invitation must be publicly advertised;

- the invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for the bidders to properly respond to the invitation;
- all bids must be opened publicly at the time and place stated in the invitation for bids;
- a firm-fixed-price contract award must be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs must be considered in determining which bid is lowest; and
- any or all bids may be rejected when there are sound documented business reasons that to do so would be in the best interest of the program.

#### Competitive Negotiation

With this method of procurement, proposals are requested from a number of sources and the Request for Proposal or quotation is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements apply:

- proposals must be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals must be publicized and reasonable requests by other sources to compete must be honored to the maximum extent practicable;
- the Request for Proposal must identify all significant evaluation factors, including price or cost where required and their relative importance;



- the grantee must have mechanisms for technical evaluation of proposals received, for determinations of responsible offerors for the purpose of written or oral discussions, and for selection for contract award;
- award may be made by the responsible offeror whose proposal will be most advantageous to the procuring party. Unsuccessful offerors should be notified promptly; and
- grantees may utilize competitive negotiation procedures for procurement of architectural or engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

Non-competitive (Sole Source)

This procurement method requires prior DOC approval if over \$10,000 and may be used when:

- the item or service is available from only one source;
- urgent public need will not allow for the delay caused by advertising;
- although a number of bids were solicited, only one response was received;
- such contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and other technical resources, or accessibility to other necessary resources;
- procurement records or files shall provide at least pertinent information including justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated;



- a system for contract administration must be maintained by the grantee to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow up of all purchases;  
or
- an engineering firm has already been selected on a prior phase of a federally funded project and where CDBG funds will be used in completing a pre-existing and continuing project (e.g., Environmental Protection Agency (EPA) or Farmers Home Administration (FmHA) grants).

#### CONTRACT PROVISIONS

The grantee must include, in addition to the provisions needed to define a sound and complete agreement, the following provisions in all contracts and subgrants. (Also see Exhibit III-B, Required Contract Provisions.) Refer to the Requirements Notebook for copies of the federal regulations referenced below. Refer to Chapters V, Civil Rights; VI, Labor Standards; and VIII, Public Facilities Projects for exhibits providing sample forms to use in complying with the requirements discussed in this section.

- contracts other than small purchases must contain such contractual provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for appropriate sanctions and penalties;
- all contracts in excess of \$10,000 must contain provisions for termination "for convenience" by grantee, including when and how termination may occur and the basis for settlement. In addition, all contracts must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

- all contracts awarded by grantees and their contractors or subgrantees having a value of more than \$10,000 must contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60);
- all contracts and subgrants for construction or repair must include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This act provides for each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee must report all suspected or reported violations to DOC;
- all construction contracts awarded by grantees in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. Copies of the Act are available upon request to the CDBG liaison;
- the grantee must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract must be conditioned upon acceptance of the wage determination. The grantee must report all suspected or reported violations to DOC. Contracts entered into for the rehabilitation of 7 or less residential units within one structure are exempt from compliance with the provision of the Davis-Bacon Act;

- where applicable, all contracts awarded by grantees in excess of \$2,000 for construction contracts which involve the employment of mechanics or laborers must include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of eight hours and a standard work week of 40 hours. Work in excess of the standards workday or work week is permissible provided that the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or material or articles ordinarily available on the open market;
- all negotiated contracts except those of \$10,000 or less must include a provision that DOC, HUD, the comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purposes of making audit, examination, excerpts, and transcriptions for three years after final payment of the grantee and all pending matters are closed; and
- contracts, subcontracts, and subgrants of amounts in excess of \$100,000 must contain a provision which requires compliance with all applicable standards, orders, or

requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h) or Section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), prohibit the use of facilities included on the EPA list of Violating Facilities. The provision shall require reporting of violations to DOC and to the U.S.EPA Assistant Administrator for Enforcement.

## BIDDING DOCUMENTS

### Design Requirements

Invitations for bids, requests for proposals, or specifications shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured.

An architect or engineer will normally prepare the technical bid specifications. During the process of project design, the following requirements will apply and must be included in the bidding documents or project file;

- architect or engineer certification of compliance with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Useable by, the Physically Handicapped," Number A-117.1-R1971, subject to exceptions contained in 41 CFR 101-19.604;
- depending upon the nature of the project, the working drawings may have to be approved by other State agencies, i.e., Department of Health and Environmental Sciences. Such approvals must be on file at the local level;
- lead-based paint shall not be specified or used;

- all projects shall be designed to meet the thermal insulation standards of the American Society of Heating, Refrigeration, and Air Conditioning Engineers, Inc., Standard 90-75;
- all housing rehabilitation projects shall meet Section 8, Housing Rehabilitation Minimum Standards and all other Standards required; and
- improvements proposed in floodplains must be flood-proofed and flood insurance purchased.

#### Equal Opportunity Requirements

In addition to the design requirements to be incorporated into the bidding/contracting documents, the following additional requirements must be incorporated.

The grantee must develop procedures for securing and monitoring contractor compliance with various federal equal opportunity requirements. The applicable language must be included in the bid specifications and contract documents; the contractor's eligibility must be verified; required contractor documentation must be secured; and contractor compliance must be monitored.

The grantee must include the following equal opportunity provisions and contractor certifications in the bid documents:

- Contractor's Certification Regarding Equal Employment Opportunity;
- Contractor's Certification Regarding Section 3 and Segregated Facilities;
- Subcontractor's Certification Regarding Equal Employment Opportunity;
- Subcontractor's Certification Regarding Section 3 and Segregated Facilities;

- E.O. 11246 clause (all seven paragraphs if above \$10,000 or first three paragraphs of Equal Opportunity provisions if \$10,000 or under);
- When over \$10,000, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246);
- When over \$10,000 Standard Federal Equal Employment Opportunity Construction Contract Specifications (E.O. 11246);
- Segregated Facilities clause;
- Title VI clause;
- Section 109; and
- Section 3, Housing and Urban Development Act of 1968.

The law provides that to the greatest extent feasible, training and employment opportunities shall be made available to lower-income residents of project areas and that contracts be awarded to small businesses located within the project area or owned in substantial part by project area residents.

#### Labor Standards and Requirements

The grantee must develop construction contracting procedures that comply with all federal and State labor standards and compliance procedures. The grantee must follow applicable wage rate decisions from the U.S. Department of Labor. In addition, the grantee must include labor standard provisions in the bid specifications and contract documents, and monitor contractor compliance.

Procedures for obtaining wage rate decisions, labor standards provisions, and required contractor certifications concerning the Davis-Bacon Act are available from the CDBG liaison.

Required provisions include:

- Contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements;

- Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements;
- Davis-Bacon provisions for contracts of \$2,000 or more;
- Contract Work Hours and Safety Standards Clause;
- Employment of Apprentices/Trainees Clause;
- Copeland Anti-Kickback Clause; and
- Applicable wage rate determinations.

#### Other Federal Requirements

In addition to the Labor Standards and Equal Employment Opportunity provisions and documents previously discussed, the following federal provisions must be included when applicable:

- Bonding and Insurance Requirements Clause. (Federal bonding requirements apply for contracts in excess of \$100,000. Smaller contracts must comply only with local bonding requirements.);
- Conflict of Interest;
- Access Records/Maintenance of Records;
- Clean Air/Water;
- Special Conditions pertaining to Hazards, Safety Standards and Accident Prevention (including Lead-Based Paint Prohibition); and
- Flood Insurance, if applicable.

#### REAL PROPERTY MANAGEMENT STANDARDS

This section prescribes standards governing the utilization and disposition of real property acquired in whole or in part with CDBG grant funds. Further information is contained in OMB Circular 102, Attachment N, which is included in the Requirements Notebook.

"Real property" is defined as land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment. The grantee shall have title to real property subject to the condition that the grantee shall use the real property for the authorized purpose of the original grant as long as needed.

The grantee shall obtain approval from DOC for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects must be consistent with the provisions of Circular 102 Attachment N.

When the real property is no longer needed, the grantee shall request disposition instructions from DOC. Income derived from the sale or other disposition of property shall be considered as program income, and as such is subject to requirements in Circular 102, Attachment E.



## Chapter III

### EXHIBITS

III-A -- Types of Procurement Methods

III-B -- Required Contract Provisions



## EXHIBIT III-A

### Types of Procurement Methods

PROCUREMENT METHOD	DESCRIPTION
Small Purchases	Small purchases are made using purchase orders. Competition should be sought through oral or written price quotations. The ceiling for small purchases should be established by each State. Circular A-102 sets the ceiling for small purchases at \$10,000.
Formal Advertising	Sealed bids are publicly solicited through formal advertising. A firm fixed-price contract is awarded to the responsible contractor whose bid is responsive and lowest in price.
Competitive Negotiation	Proposals are requested from qualified vendors or through advertising. Negotiations are conducted with those bidders who are within competitive range based on an evaluation of bidders' pricing and technical proposals. After negotiations, bidders may submit a "best-and final" offer. A contract is awarded to the bidder whose "best-and final" offer scores the most points on a predetermined evaluation criteria.
Noncompetitive Negotiation	Noncompetitive negotiation may be used under limited circumstance. Please contact the CDBG liaison if this option is being considered.



EXHIBIT III-B  
REQUIRED CONTRACT PROVISIONS

For Any Contract Obtained Through a Competitive Sealed Bid, Competitive Negotiation or Noncompetitive Negotiation Method of Procurement	Negotiated Contracts Not Using Small Purchase Procedures	For any Construction Contract	For Any Construction Contract Over \$2,000	For Any Contract Over \$2,500 Using Laborers or Mechanics	For Any Contract Over \$10,000	For Any Contract Over \$100,000
<ul style="list-style-type: none"> <li>- Administrative, legal or contractual remedies for violation or breach of contract terms</li> <li>- Patent and Copy Rights of HUD</li> </ul>	*	*	*	*	*	*
<ul style="list-style-type: none"> <li>- Proper, clear scope of work with necessary description and/or specifications</li> <li>- Section 3 HUD Act of 1968 requirements: Procurement and labor from within the County.</li> <li>- Section 109 HUD Act of 1974</li> <li>- American Standard Specifications for Physically Handicapped 41 CFR 101-19, 604</li> </ul>	<ul style="list-style-type: none"> <li>- Access to Records by Fed. Gov't.</li> </ul>	<ul style="list-style-type: none"> <li>- Copeland "Anti-Kickback"</li> </ul>	<ul style="list-style-type: none"> <li>- Davis-Bacon Wage Rates</li> <li>- Contract Work Hrs. Safety Standards</li> <li>- Section 103 &amp; 107</li> </ul>	<ul style="list-style-type: none"> <li>Contract Work Hrs. &amp; Safety Standards</li> <li>Section 504 No Discrimination Of Handicap Workers Rehab Act of 1973</li> </ul>	<ul style="list-style-type: none"> <li>- Contract Termination &amp; Settlement by Grantee &amp; Contractor</li> <li>- Equal Employment Opportunity</li> <li>- Section 3 Plan Required</li> </ul>	<ul style="list-style-type: none"> <li>- Section 306 of the Clean Air Act</li> <li>- Section 508 of the Clean Water Act</li> <li>- EPA Regs on Non-exempt Fed. Contracts</li> </ul>

\* Includes Preceding Requirements and Architectural Barriers Act (where Applicable)



# **Chapter IV**

## **Financial Management**





## CHAPTER IV

### FINANCIAL MANAGEMENT

#### OVERVIEW

This chapter provides guidelines for the financial management of CDBG funded activities. The purpose of the guidelines is to ensure that the grantee maintains an accurate and complete financial management system that complies with all applicable State and federal laws, regulations, and procedures

Most of the recordkeeping and reporting requirements of CDBG are consistent with the presently operating accounting systems of Montana's local governments: the Budgetary, Accounting, and Reporting System (BARS) for cities and counties, and the Town Accounting System (TAS) for towns. The following discussion of financial management procedures assumes grantees are familiar with the accounting and reporting procedures and policies of these systems.

#### APPLICABLE LAWS

In addition to the Montana statutes that specifically outline the financial management procedures cities, towns, and counties must follow, CDBG grantees must also comply with specific federal requirements. These key federal regulations and requirements include the objectives set forth in Office of Management and Budget (OMB) Circulars A-102 and A-87, which are included in the Requirements Notebook. In summary these requirements include:

-- OMB CIRCULAR A-102, ATTACHMENTS C, G, and H -- RECORDKEEPING

Attachment C requires that the grantee maintain program records for a period of three years following close-out of the CDBG activities or until any liens, claims, or litigation related to the expenditure of the funds are resolved. (Montana law, Sections 7-5-2132 and 7-5-4124, MCA provide guidance for record retention.)

Attachment G prescribes standards for financial management systems of grant-supported activities of local governments. Specifically, grantee financial management systems must provide for:

- accurate, current and complete disclosure of the financial results of each grant program. (This includes reporting on an accrual basis when required);
- records that adequately identify the source and application of funds for grant-supported activities;
- effective control and accountability for all funds, property, and other assets purchased with grant funds;
- comparison of actual outlays with budgeted amounts for each grant;
- procedures which minimize the time elapsing between the transfer of funds from the U.S. Treasury (through the State) and the disbursement by the grantee;
- procedures for determining reasonableness, allowability, and allocability of costs in accordance with the provision of OMB Circular A-87 (discussed later);
- accounting records that are supported by adequate source documentation; and
- a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

Attachment H prescribes uniform reporting procedures for grantees to follow. Under the Montana CDBG program, grantees are not required to use an accrual system if they are presently operating under a cash basis system. However, the grantee must be prepared to develop accrual data when State reporting requirements mandate inclusion of all costs.

-- OMB CIRCULAR A-102 ATTACHMENT E -- PROGRAM INCOME

Attachment E outlines the standards set forth to account for program income related to projects financed in whole or in part with federal grant funds.

As defined in Attachment E and the related sections of the CDBG regulations at 24 CFR Part 570, the term "program income" includes, but is not limited to, the following:

- proportional shares of proceeds of the sale of real property, to the extent to which the original purchase was funded with CDBG monies (e.g., if 50% of the original purchase price of a house was paid for with CDBG funds, then 50% of the proceeds from the sale of that house becomes program income);
- interest earned from investment or program income;
- proportional shares of special assessments, to the extent to which the initial costs were paid with CDBG monies;
- payments of principal and/or interest on loans made from CDBG funds; and
- interest income earned on rehabilitation "escrow" accounts. Also refer to CPD Notice 79-27 in the Requirements Notebook for further guidance on the use of escrow accounts.

According to the provisions of the attachment, all program income earned during the grant period must be retained by the grantee, and added to funds committed to the project unless otherwise provided for in the grant agreement. In addition, the attachment specifically states that any interest earned on advances drawn from the U.S. Treasury (including those drawn through the State) is not program income and cannot be retained by the grantee.

-- OMB CIRCULAR A-102 ATTACHMENT L -- GRANT CLOSE OUT PROCEDURES

Attachment L specifies uniform close-out procedures for grantees and includes the following requirements:

- prompt processing of final drawdown requests of grants being closed out;
- an immediate refund by the recipient of any funds unobligated which may not be used on other CDBG grants;

- the submission within 90 days of all required financial, performance, and other reports required as a condition of the grant;
- the submission of an accounting for all property acquired with CDBG funds; and
- retention by the State of the right to recover appropriate amounts after considering recommendations on disallowed costs resulting from a final audit.

-- OMB CIRCULAR A-102, ATTACHMENT N -- PROPERTY STANDARDS MANAGEMENT

This attachment prescribes uniform standards governing the utilization and disposition of real, personal, and non-expendable property acquired in whole or in part with federal funds, or whose cost was charged to a project supported by a federal grant. The attachment authorizes grantees to use their own property management standards and procedures provided the provisions of the attachment are included.

-- OMB CIRCULAR A-102 ATTACHMENT O -- PROCUREMENT STANDARDS

Attachment O provides an overview of grantee procurement standards. Chapter III, Procurement Standards, provides an in-depth discussion.

-- OMB CIRCULAR A-102, ATTACHMENT P -- AUDIT REQUIREMENTS.

Attachment P establishes audit requirements for state and local governments that receive federal assistance. The requirements are established "to ensure that audits are made on an organization-wide basis, rather than on a grant-by-grant basis." A partial effect of this Attachment is the requirement that CDBG dollars be audited whenever the regular city or county audit is performed. The Audit Bureau of the Local Government Services Division, Montana Department of Commerce, can provide additional guidance for compliance to Attachment D.

-- OMB CIRCULAR A-87 -- COST PRINCIPLES FOR STATE AND LOCAL  
GOVERNMENTS

A-87 establishes the basic principles for determining whether specific costs are allowable under CDBG. Any costs incurred or expended by a grantee for a CDBG funded activity must:

- be necessary and reasonable for the proper and efficient administration of the grant activities;
  - be allocable to the grant;
  - be authorized or not prohibited under State or local law; and
  - conform to any limitations or exclusions set forth in federal laws and regulations.
- U.S. TREASURY CIRCULAR 1075 -- REGULATIONS GOVERNING WITHDRAWAL OF CASH FROM THE U.S. TREASURY FOR ADVANCES UNDER FEDERAL GRANTS AND OTHER PROGRAMS

Treasury Circular 1075 requires that:

- "Cash advances to a recipient organization shall be limited to the minimum amounts needed and shall be timed to be in accord only with actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program costs and the proportionate share of any allowable indirect costs;" and
- "Cash advances made by primary recipient organizations (e.g., states) to secondary recipient organizations (e.g., localities) shall conform to the same standards of timing and amount as apply to cash advances by federal program agencies to primary recipient organizations."

## LOCAL GRANTEE RESPONSIBILITIES

### Overview

Grantees have the responsibility for employing a fiscal organization and management system that assures proper and efficient administration of the grant. The following three basic principles should guide the development of such systems:

- procedures for the financial administration of the grant should be formalized so that they can be applied uniformly and consistently;
- procedures should be designed to ensure adequate internal control of funds; and
- financial transactions should be documented to create an audit trail.

Typically, the majority of the State and federal financial requirements are satisfied through the operation of the grantee's central accounting system, BARS or TAS. The Local Government Services Division of DOC has prepared comparisons of BARS and TAS to an acceptable CDBG accounting system. (These comparisons appear as Exhibits A and B respectively.)

In the event a grantee is operating on a system other than BARS or TAS, or if the grantee is uncomfortable with the additional requirements of the CDBG Program, the grantee should immediately contact the State CDBG liaison who will work with the grantee to determine what steps are required to ensure that the grantee can adequately handle the financial management requirements tied to the grant award.

The following steps may be followed by grantees as a guide to the establishment of the financial administration of the CDBG grant.

### Step 1 -- Discuss Project with Local Fiscal Officer

The CDBG project manager and staff should meet with the grantee's fiscal officer to discuss the division of responsibilities for the program. Typically, the local CDBG staff will:

- review all expenditures through contracts, invoices, and/or purchase orders;
- ensure proper coding of expenditures; and
- review and process requests for payments by contractors.

The local fiscal officer will typically:

- maintain records;
- prepare financial reports; and
- prepare checks for approved expenditures.

The fiscal officer and local CDBG office should also outline the internal controls necessary to eliminate the potential for fraud and abuse of CDBG funds. A Fraud Information Bulletin is included in the Requirements Notebook to illustrate some of the problems grantees may encounter. The system of internal controls should meet the following criteria:

- no single person should have complete control over every phase of a significant transaction. For example, the person who authorizes payments to contractors should not also sign and issue the payment check;
- fiscal recordkeeping should be separate from other program management operations;
- monthly bank reconciliations should be made by someone who is not responsible for handling cash or issuing checks; and
- preparation of payrolls and issuance of paychecks should be handled by different individuals.

## Step 2 -- Establish Depository for Federal Funds

To be in compliance with Treasury Circular 1075 and OMB Circular A-102, Attachment E, grantees must either:

- establish a non-interest bearing checking account to serve as the depository for CDBG funds; or
- establish a mechanism to record any interest earned on CDBG advances and return this interest to the U.S. Treasury.

The State encourages grantees to establish a non-interest bearing account.

In addition to the cash receipts journal, the grantee must also maintain a cash control register which summarizes the balance of grant funds available, drawdowns from the State, funds received, disbursements, and balance of cash on hand. This information is needed in preparing requests for payments from the State and is useful as a monitoring tool for the grantee and the State in determining whether cash draws have been kept to the minimum amount needed. (A sample cash control register is provided as Exhibit IV-C.)

## Step 3 -- Establish CDBG Budget/Fund

Grantees should utilize the uniform account numbers set forth by BARS or TAS for the establishment of the accounts necessary for the recording of the CDBG funds. In order to distinguish CDBG funds from all other local resources, grantees must establish a separate Special Revenue account for CDBG assurances. For BARS communities, fund #2740 is suggested; for Towns, fund #274 may be assigned. Please refer to Exhibits IV-A and IV-B for additional guidance.

In addition, Grantees must obtain budgetary authority to expend CDBG dollars. Immediately following approval of the CDBG contract, the governing body of the Grantee must by formal resolution adopt a CDBG budget and appropriate the entire amount authorized in accordance with the terms of the contract.



#### Step 4 -- Establish and Maintain Document Files and Records

The ease with which a CDBG project can be audited often depends on the degree to which source documentation was maintained and filed. Proper source documentation which provides the details of each financial transaction allows recreation of audit trails even in those instances where summary records and reports may not have been completed properly. Examples of source documentation include: verification of deposits through the letter of credit, employee time and attendance sheets, purchase orders, travel vouchers, invoices, and contractor requests for payments. Typically, this material is attached to the claim for payment.

Upon receipt and while processing each type of source documentation, the materials should be filed. A suggested set of files would include:

- open purchase order file -- represents encumbrances on program funds as the result of purchase orders that are pending fulfillment by vendors;
- open contracts file -- documentation of requests for payment. The grantee may include a summary sheet in the file to determine the financial status of each open contract;
- pending payments file -- documents such as approved invoices which will result in a cash disbursement;
- pending billings file -- copies of documents such as requests for payment from the State which will result in a cash receipt;
- personnel payroll file -- copies of each employee's time and attendance sheet and summaries for each payroll period showing allocation of time to CDBG related activities and rate of pay; and
- journal entry voucher file -- copies of vouchers for any journal entries (e.g., transfer of funds) for which there is no other source documentation. Each journal entry voucher should contain explicit information about the transaction and justification.

Access to the source documentation files should be limited to avoid arbitrary and unnecessary removal of documents. When a file of documents is required, the file system should include a log that specifies what was removed, by whom, when, and when it was returned.

The grantee should also be prepared to account for any property acquired with CDBG funds, and to dispose of, at project close-out, any property no longer needed.

#### Requesting Payment from the State

Following successful completion of the Environmental Review Record and any other special grant conditions that may have been imposed, the grantee may submit a request for payment from DOC. In contrast to past years, beginning with the 1983 Program Year, the State will obtain funds under the Letter of Credit -- Treasury Financial Communications System (LOC-TFCS). The LOC-TFCS is a funds transfer system that provides for the electronic transfer of funds between the U.S. Treasury and the State. Under this system, grantees submit their payment requests directly to DOC. All requests received by the close of business on Wednesday of each week are consolidated and a single electronic transfer of funds is requested from the Treasury Disbursing Office in San Francisco. Individual State warrants are then prepared and the requested amounts transmitted to grantees. Based on past experience, the process takes approximately ten to fourteen days to complete.

All request for payment packages must be submitted to the State CDBG liaison for processing. The package must contain:

- a federal Standard Form 183 - Request for Payment (Exhibit IV-D);
- a Budget Summary Form (Exhibit IV-E); and
- a Project Progress Report (Exhibit IV-F).

The request for payment package will not be processed if any of these forms is omitted, incomplete, or contains errors.

Preparation of SF 183 must be consistent with the instructions provided in Exhibit IV-D. Additionally, the form must contain two of the three signatures authorized to draw funds (See Exhibit I-D in Chapter I).

DOC will be comparing the authorized signatures, depository account numbers, and mailing addresses submitted with the request for payment package to that submitted on the Signature Certification (Exhibit I-D) and the Designation of Depository Card (Exhibit I-E). All information must match exactly. If there are any changes to signatures, account numbers, or addresses, notify the CDBG liaison immediately in order to avoid a delay in drawing funds.

The budget summary form (Exhibit IV-F) has been designed to allow grantees to report detailed administrative and project expenditure one request late. Primarily this is to accommodate those grantees who are requesting cash advances but are uncertain of precisely where the detail of the expenditure will be posted.

For the initial draw, the grantee need only complete the last column "G - Amount Requested this Drawdown," and submit a project progress report (Exhibit IV-G) containing a narrative description of expected use of funds. However, subsequent draws must detail the actual expenditures of the previous draw in the column, "D - Amount Expended Last Drawdown."

The project progress report must provide sufficient detail for the CDBG liaison to gain a general understanding of the progress of the project. A paragraph or two explaining the type of expenditures anticipated and the progress made to date for both the administrative and project portions of the grant should be sufficient.

A critical factor in requesting and expending federal funds is the timing of receipt and disbursement of funds. Treasury Circular 1075 states, "Cash advances to a recipient organization shall be limited to the minimum amounts needed and shall be timed to be in

accord only with actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The time and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program costs and the proportionate share of any allowable indirect costs." In addition, grantees should attempt to avoid submitting a new request until receiving funds for the previous one.

The easiest way to meet this requirement is to request payment as a reimbursement for funds expended or to cover costs associated with pending contract payment requests, purchase orders, etc. However, the cash position of many smaller local governments makes this impossible. In these cases the grantee may request advance payment of anticipated disbursement requirements. The requests should be no less than \$5,000 except for the final request for payment. If a draw of less than \$5,000 is needed, please contact the CDBG liaison for guidance.

The grantee should continually monitor the Cash Control Register (Exhibit IV-C) to determine whether estimates of anticipated costs are accurate. At no time may more than \$5,000 remain in the CDBG bank account for a period exceeding three days.

#### SUMMARY

1. The grantee is responsible for employing a fiscal organization and management system that assures proper and efficient administration of the grant.
2. The following provides a checklist of the key federal requirements which must be adhered to for the financial administration of CDBG funds:

-- Financial Management and Recordkeeping  
OMB Circular A-102, Attachments C, G, and H

- Cost Allowability  
OMB Circular A-87, Attachments A and B
- Bonding and Insurance  
OMB Circular A-102, Attachment B
- Program Income  
OMB Circular A-102, Attachment E
- Monitoring and Reporting  
OMB Circular A-102, Attachment I
- Grant Payment Procedures  
Treasury Circular 1075
- Grant Closeout  
OMB Circular A-102, Attachment L
- Property Management Standards  
OMB Circular A-102, Attachment N
- Procurement Standards  
OMB Circular A-102, Attachment O (See Chapter III, Procurement Standards)
- Audit Standards  
OMB Circular A-102, Attachment P (See Chapter XI, Grant Closeout).

3. Grantees must establish a non-interest bearing checking account as the depository for federal funds, or develop an adequate system to identify and return to the U.S. Treasury any interest earned on federal deposits.
4. In addition to typical BARS or TAS accounting records, the grantee must maintain a federal Cash Control Register to document compliance with Treasury Circular 1075.
5. Each Request for Payment Package must include a completed:
  - federal Standard Form 183;
  - Budget Summary Form; and
  - Project Progress Report.



## CHAPTER IV

### EXHIBITS

- IV-A - Using BARS to Account for Community Development Block Grants
- IV-B - Using the Town System to Account for Community Development  
Block Grants
- IV-C - Cash Control Register
- IV-D - SF 183 - Request for Payment
- IV-E - Budget Summary Form
- IV-F - Project Progress Report





Exhibit IV-A

USING BARS TO ACCOUNT FOR COMMUNITY  
DEVELOPMENT BLOCK GRANTS

Prepared by:  
Local Government Services Division  
Montana Department of Commerce

## INTRODUCTION

With the receipt of federal monies for Community Development Block Grant Programs comes increased responsibility to account for the revenue and expenditure transactions linked with the programs. The Office of Management and Budget Circular A-102, Attachment G and the HUD Office of Community Planning and Development publication entitled "Small Cities Block Grant Program - A Financial Management Manual" describe accounting and reporting procedures for CDBG. These procedures are provided for in the Budgetary, Accounting and Reporting System (BARS) established and administered by the Montana Department of Commerce, Local Government Services Division and used by most Montana counties and cities. This discussion will explain the interface between the requirements set forth in the OMB and HUD publications and BARS.

It should be noted at this time that there is no requirement to change to a new account numbering structure nor is it necessary for an entity administering a CDBG project to maintain a separate or parallel accounting system in order to report the CDBG transactions. The existing accounting structure including policies and procedures should be followed. The procedures set forth in the HUD manual should supplement but not replace those of BARS. This discussion is then, a supplement to the accounting chapter in the HUD publication and is intended for use by those entities accounting and reporting under BARS.

## STANDARDS

The standards for CDBG accounting are outlined in the HUD publication. Current standards (the National Council on

Governmental Accounting (NCGA) Statement 1 and Generally Accepted Accounting Principles (GAAP)) upon which BARS is based or the applicable Montana Laws either equal or exceed the CDBG standards as outlined below.

CDBG

BARS/Montana Law

- |   |  |
|---|--|
| 1. Retain records for a minimum of three years.   | 1. Cities retain certain records five years (7-5-4124, MCA) counties retain certain records twenty-five years (7-5-2132, MCA).   |
| 2. Accounting records must make it possible to identify all sources and uses of fund.                       | 2. BARS requires that revenues be classified by sources, expenditures should be classified by fund, function activity, sub-activity, and classes of object.  |
| 3. Sound internal control procedures and effective control to safeguard physical assets must be maintained. | 3. Internal control is built into the system through separation of duties, fixed asset inventories and General Ledger controls over receivables and payables. Fund accounting is also a basic method of control. |
| 4. An audit is conducted at least every two years.  | 4. Montana local governments must be audited at least every two years (2-7-503,  |

MCA).

5. Costs incurred in CDBG activities are allowable only under certain conditions.

5. By definition, Special Revenue funds in which CDBG activities are recorded account for the proceeds of specific revenue surces that are legally restricted to expenditures for specific purposes. The allowable expenditures are defined in the grant agreement.

6. Financial reports are to be prepared in a timely manner and reports to HUD or DOC are to be on an accrual basis.

6. Revenue, expenditure and trial balance reports are required monthly. An annual report is to be prepared within two months of year end. Accrual and encumbrance accounting will be discussed later in this report.

#### ACCOUNTING PROCEDURES

The intention of this discussion is not to provide a step by step procedures manual with instructions on recording and posting transactions. It is assumed that the users of this report are on BARS and are familiar with the accounting and reporting policies and procedures of the system.

A separate Special Revenue fund entitled "Community Development Block Grant Fund" should be established in order to begin accounting

for CDBG transactions. There currently is not a number in the BARS Chart of Accounts for this purpose. It is suggested that Fund #2740 be used for this purpose. (If more than one CDBG fund exists, use 2741, 2742, etc.)

Once the fund is established, an appropriate general ledger should be built. The following accounts are necessary:

10100	Cash
12200	Accounts Receivable
13200	Due from Block Grant Program
17100	Estimated Revenues
17200	Revenues
20100	Warrants Payable (if Claims Fund is not used)
20200	Accounts Payable
20400	Contracts Payable (if applicable)
20450	Contracts Payable - Retained Percentage (if applicable)
20620	Accrued Wages Payable
24100	Appropriations
24200	Expenditures
24300	Encumbrances
24400	Reserve for Encumbrances
27100	Fund Balance

The above is neither an exhaustive list nor will every entity find it necessary to include all of the account numbers listed. An effort should be made to maintain all of the accounts necessary to provide the information for the BARS monthly reports and to meet grant reporting requirements.

The HUD manual requires that CDBG revenues be segregated by source. It is especially important that any local contributions (or matching portion) be recorded separately from State draws. The following revenue source numbers are suggested for the revenue received from State draws.

331030		Housing and Urban Development
	or	
331230		Community Development Block Grant

The manner in which any local contribution may be financed will determine the revenue source number to be used. If, for example, the local money is to come from another fund in the form of a transfer, the number 383010 - Transfers from \_\_\_\_\_ Fund may be used. (This transfer could possibly be made from the General, Revenue Sharing or PILT funds for example.) In the event revenues that may be used at the discretion of the local governing body are deposited directly into the CDBG fund, use the revenue source number for that particular revenue. Two of these discretionary revenues are 334065 Severance Tax and 337014 Payments in Lieu of Taxes.

Depending on the purpose of the grant, there is probably sufficient detail available in the existing expenditure accounts and object numbers to provide an adequate description of CDBG expenditures. Care should be taken when choosing expenditure account numbers so that reporting requirements will be met. It may be necessary for the administering entity to make use of more detailed expenditure levels than it is accustomed to. If, for example a grant is given to expand a sewer system, the following expenditure accounts may be used:

430620 Facilities - to account for a new office or shop

430630 Collection and Transmission - to account for cost of sewer lines

430640 Treatment and Disposal - to account for cost of sewage lagoons and treatment facilities

The object of expenditure used with the above expenditure accounts should also include enough detail to enable reporting to be done as required by the grantor.

#### ACCOUNTING RECORDS

The accounting records required for CDBG are essentially the same as those required for BARS. Those records are listed and discussed below. Two main types of records are included in the discussion. Books of original entry are those records in which various transactions are formally recorded for the first time, such as the Cash Receipts Journal, Cash Disbursements Journal and the General Journal Voucher. Where mechanized bookkeeping methods are used, it may happen that one transaction is recorded simultaneously in several records, one of which may be regarded as the book of original entry. Books of final entry are the summary records in which accounting information is accumulated for financial reporting such as the General Ledger and the Fixed Asset Ledger. The following is only a discussion of the required records already in use by entities on BARS.

Cash Receipts Journal - all receipts for cash that are deposited to a fund are recorded in this journal.

Cash Disbursement Journal or Journal of Treasurer's Disbursements - all cash disbursements are recorded in this journal. The method in which claims are processed will cause the means by which expenditures are recorded to vary.

Encumbrance accounting will be explained later in this discussion.

General Journal Voucher - a voucher provided for the recording of certain transactions or information in place of or supplementary to the journals or registers. The General Journal Voucher usually contains an entry or entries, explanations, references to documentary evidence supporting the entry or entries, and the signature or initials of one or more properly authorized officials. General Journal Vouchers are usually maintained in a file or loose leaf binder.

General Ledger - A book of final entry which contains the accounts needed to reflect, in summary and in detail, the financial position and the results of financial operations of a governmental unit.

Fixed Asset Ledger - a listing or card-file inventory of all fixed assets acquired using CDBG monies. Since under BARS, fixed assets are not accounted for in Special Revenue Funds, it will become necessary, at the end of the reporting period to properly account for any property acquired under the CDBG program to which the local government retains title. Any fixed assets recorded in the ledger should meet all criteria established in the local governmental unit's capitalization policy. This is explained in more detail later in the discussion.

#### ADDITIONAL ACCOUNTING RECORDS

State accounting records that should be maintained:

CDBG Federal Cash Control Register - This register, though not



provided for in BARS, is used to summarize the status of federal cash on hand. It will document and control the following:

- requests for payments (drawdowns on the letter of credit);
- U.S. Treasury checks received;
- collections, refunds and miscellaneous receipts;
- disbursements; and
- balance of federal cash on hand.

Frequent review of this register will help determine whether an entity is in compliance with the \$5,000/3 day rule. This register may also serve as a cross-check of certain general ledger accounts.

Statement of Expenditures and Encumbrances Compared with

Appropriations - This report is required for BARS reporting and is prepared monthly. Its purpose is to reflect the unencumbered/unexpended balance of each budgeted account. This statement is an important analytical tool for control of expenditures. For instance, it is often used to determine those expenditure categories which have incurred expenditures larger than anticipated. This statement, then serves as a tool for decision making by department heads or executives who control a program.

Statement of Estimated and Actual Revenue - This report is required for BARS reporting and is prepared for all budgetary funds on a monthly basis. It is important that the governmental unit recognize during the course of the year whether revenues are being collected at a proper rate. A

comparison of monthly revenues with past estimates will provide a prompt notice that actual collections are falling behind estimates. With this information, management can take the appropriate steps to satisfy itself as to the reasons for the lack of revenue, and if necessary, adjust the rate and/or amount of expenditures.

Source Documents - The details of accounting transactions are initially recorded on source documents. Source documents can be either internally or externally generated. Information from these documents is used to post to books of original entry. These documents are filed by document numbers. These files must be retained for a period of three years after program close-out. Included among source documents are: purchase orders; time cards; claims; travel vouchers; and general journal vouchers.

Files - It is necessary to keep several open files on source documents to facilitate control. Most entities keep files of unpaid claims, employee payroll records, contracts and purchase orders. Maintaining the open files will enable an entity to accumulate information for year-end accruals. After source documents have been processed, they should be transferred to permanent files where they are filed numerically by document type.

#### ADDITIONAL CONSIDERATIONS

Because its resources are authorized by a governing body and destined for public purposes, the primary responsibility of local government is to provide essential information and controls to

assure the local governmental governing body, the local taxpayer, and other governmental agencies that the local entity has carried out executive and legislative intent. In addition, full disclosure of the financial operations of the governmental unit is necessary. Legal compliance with pertinent restrictions and information needs mandate an accounting system that will adequately meet those requirements. The following are additional considerations that will enable an entity to meet CDBG accounting and reporting standards.

Recording the Budget - Though most entities do record their adopted budgets in the revenue and expenditure subsidiary ledgers, recognition of the budget is not given in the general ledger. During the fiscal year actual revenue collections need to be compared periodically with budgeted collections in order to evaluate both actual performance and budgeting techniques. Similarly, the actual expenditures need to be compared with appropriations. Two basic requirements must be accomplished to record the budget's provisions:

- 1) The total amount of expenditures authorized by the legislative body must be recorded by a credit to Appropriation #24100.
- 2) The resources provided or contemplated by the legislative body for financing the authorized expenditures must be recorded by a debit to Estimated Revenues #17100.

Estimated Revenues and Appropriations are control accounts supported by the subsidiary ledgers in which local government entities have been recording their adopted budgets. At the time the budget is adopted and recorded in the general ledger,

it may be necessary to record any difference between Estimated Revenues and Appropriations as an offset to Fund Balance. For example, if an entity adopts a revenue budget totaling \$57,000 and appropriations totaling \$60,000, the following entry will be used to record the budget in the CDBG Fund:

		DR	CR
2740-17100	Estimated Revenue	\$57,000	
2740-27100	Fund Balance	\$ 3,000	
2740-24100	Appropriations		\$60,000

Closing entries are made at year-end to reverse the above entry.

Encumbrance Accounting - To avoid exceeding the amount authorized to be spent for goods and services, it is important to maintain a record, not only of expenditures already incurred, but also of commitments made against expenditure accounts. Hiring employees, issuing purchase orders, or signing contracts give rise to contingent liabilities which will become actual liabilities when goods or services are received. In order to keep track of purchase orders and contracts outstanding it is recommended that an encumbrance system be established. Since salaries and wages can definitely be determined in advance, personal service costs are not encumbered. If, for example, a purchase order is issued for materials and supplies in the amount of \$300,000, the following entry illustrates the recording of the possible liability:

		DR	CR
2740-24300	Encumbrances	\$300,000	
2740-24400	Reserve for Encumbrances		\$300,000

As the materials are received and claims are paid, the encumbrance is reversed and the expenditure recognized. In the

event the claim amount differs from the amount encumbered, the amount of the original encumbrance is reversed and the actual expenditure is recognized. An illustration follows assuming the claim for the above example is \$297,000 (which is immediately paid):

	DR	CR
2740-24400 Reserve for	\$300,000	
Encumbrances		
2740-24300 Encumbrances		\$300,000
2740-24200 Expenditures	\$297,000	
(and subsidiary		
ledgers)		
2740-10100 Cash		\$297,000

At year end, any balance remaining in the Encumbrance and Reserve for Encumbrance accounts will be closed with reversing entries. At this point, liabilities should be recognized for any encumbrances that will actually be converted to claims against the entity. Any other encumbrances may be reappropriated for during the next year.

Year End Accrual - Generally accepted accounting principles for governmental units require that expenditures should be recognized in the accounting period in which the fund liability is incurred. The accrual basis of accounting results in accounting measurement based on the substance of transactions, rather than when cash is received or disbursed, and thus enhances the timeliness, completeness, and comparability of financial statements. Many accrual entries are presently handled on BARS through timely entries to various receivable and payable accounts. These entries are made for revenue recognition (i.e. taxes and utility charges) and for

expenditures such as interest and principle on bonded or contractual debt.

There are other transactions that require the use of accrual entries, that could be handled on the system in a similar manner, however, in the interest of time and efficiency these accrual entries can be adequately handled through year-end adjustments. Any goods and/or services received prior to close of business at year-end that will not be paid until the subsequent period incur a liability of the current period and should be accrued to reflect the proper expenditure.

As an example, \$2,500.00 worth of CDBG vendor invoices and/or claims is received prior to June 30, 1982, for goods or services received. The liability represented by these claims or invoices should be accrued in the 1982 fiscal period as follows:

	DR	CR
2740-24200 Expenditures	\$2,500	
2740-20200 Accounts Payable		\$2,500

(Remember that the appropriate subsidiary expenditure accounts must also be posted.)

It is also necessary to accrue such items as utility bills and payroll if these items are not paid for at year-end.

When the warrant is written, the accounts payable is then liquidated:

	DR	CR
2740-20200 Accounts Payable	\$2,500	
2740-20100 Warrants Payable		\$2,500

A similar process is followed when recognizing revenues through accrual entries. An accounts receivable is established when the revenue is recognized.

	DR	CR
2740-12200 Accounts Receivable	\$5,000	
2740-17200 Revenue		\$5,000

(Remember to post to the appropriate subsidiary revenue accounts.)

The accounts receivable is then liquidated when cash is received.

	DR /	CR
2740-10100 Cash	\$5,000	
2740-12200 Accounts Receivable		\$5,000

Purchasing - An effective purchasing system can achieve the objective of economical and efficient use of available dollars. A properly implemented purchasing system will, when tied to an encumbrance system, help to account for the portion of the budget that has been committed for goods and/or services. The governing body should legislate a purchasing policy. This policy will provide information to vendors, salesmen and department heads as to their individual responsibilities and methods to be followed when purchasing for the local government. A purchasing policy should contain the following elements:

- A. Designating person(s) authorized to make purchases and to determine that the item actually is required and, that it is required in the quantity ordered.
- B. Requiring use of the approved forms for purchasing such as purchase requisitions, purchase orders, bid requests, receiving reports, etc.
- C. Requiring approval by the accounting department to indicate that there is sufficient balance in the unencumbered appropriation and that the expenditure is in accordance



with the purpose of the appropriation.

- D. Outline procedures for emergency and small item purchases without prior approval.
- E. Requiring competitive bids for purchases over a stated amount as specified by local ordinances or state or federal law.

Fixed Assets - Local government fixed assets are classified into two basic categories according to usage:

- a. Those related to the revenue-producing activity of an Enterprise Fund, Internal Service Fund, or Trust Fund which are directly recorded as assets of the using fund.
- b. The General Fixed Assets not related to a specific service, from which revenue is obtained, are recorded in the General Fixed Assets Account Group.

As a CDBG Fund is closed, or at year end, those fixed assets which are retained by the local government should be recorded according to the above guidelines. Each asset should be recorded in the subsidiary asset inventory cards following the criteria established by the local capitalization policy. The contribution by the CDBG Fund should be noted on the inventory cards and recognized on the General Ledger. If the asset is to be recorded in the General Fixed Asset Account Group, the following entry is made using the acquisition of a piece of equipment for example:

	DR	DR
9000-18600 Machinery & Equipment	\$15,000	
9000-28510 Investment in General		
Fixed Assets -		
CDBG Funds		\$15,000



Should the asset be recorded in an Enterprise Fund as would be water improvements, the following entry is made which recognizes the CDBG contribution:

5210-18940	Transmission & Distribution	\$150,000
5210-26110	Contribution from CDBG	
	Grant	\$150,000

Care should be taken to off-set any depreciation expense related to Enterprise Fund contributed assets against the contribution accounts.



Exhibit IV-B

USING TAS TO ACCOUNT FOR COMMUNITY  
DEVELOPMENT BLOCK GRANTS

Prepared by:  
Local Government Services Division  
Montana Department of Commerce

## INTRODUCTION

With the receipt of federal monies for Community Development Block Grant Programs comes increased responsibility to account for the revenue and expenditure transactions linked with the programs. The Office of Management and Budget Circular A-102, Attachment G and the HUD Office of Community Planning and Development publication entitled "Small Cities Block Grant Program - A Financial Management Manual" describe accounting and reporting procedures for CDBG. Some of these procedures are not provided for in the Uniform Accounting and Reporting System for Incorporated Towns established and administered by the Montana Department of Commerce, Local Government Services Division and used by most Montana towns. This discussion will explain the interface between the requirements set forth in the OMB and HUD publications and the Town System and provide necessary changes for the Town System to comply with the federal requirements.

It should be noted at this time that there is no requirement to change to a new account numbering structure nor is it necessary for an entity administering a CDBG project to maintain a separate or parallel accounting system in order to report the CDBG transactions. The existing accounting structure including policies and procedures should be followed. The procedures set forth in the HUD manual should supplement but not replace those of the Town System. This discussion is then, a supplement to the accounting chapter in the HUD publication and is intended for use by those entities accounting and reporting under the Town System.

## STANDARDS

The standards for CDBG accounting are outlined in the HUD publication. Standards upon which the Town System is based or the applicable Montana Laws either equal or exceed the CDBG standards as outlined below.

<u>CDBG</u>	<u>Town System/Montana Law</u>
1. Retain records for a minimum of three years.	1. Towns retain certain records five years (7-5-4124, MCA).
2. Accounting records must make it possible to identify all sources and uses of funds.	2. The Town System requires that revenues be classified by sources, expenditures should be classified by functional purpose and classes of object.
3. Sound internal control procedures and effective control to safeguard physical assets must be maintained.	3. Internal control is built into the system through separation of duties, fixed asset inventories and General Ledger controls over receivables and payables. Fund accounting is also a basic method of control.
4. An audit is conducted at least every two years.	4. Montana local governments must be audited at least every two years (2-7-503,MCA).
5. Costs incurred in CDBG activities are allowable only under certain conditions.	5. By definition, Special Revenue funds in which CDBG activities are recorded account for the proceeds of specific revenue sources that are legally

restricted to expenditures for specific purposes. The allowable expenditures are defined in the grant agreement.

6. Financial reports are to be prepared in a timely manner and reports to DOC are to be on an accrual basis.

6. Revenue, expenditure and trial balance reports are required monthly. An annual report is to be prepared within two months of year end. Accrual and encumbrance accounting will be discussed later in this report.

#### ACCOUNTING PROCEDURES

The intention of this discussion is not to provide a step by step procedures manual with instructions on recording and posting transactions. It is assumed that the users of this report are on the Town System and are familiar with the accounting and reporting policies and procedures of the system.

A separate Special Revenue fund entitled "Community Development Block Grant Fund" should be established in order to begin accounting for CDBG transactions. There currently is not a number in the Town System Chart of Accounts for this purpose. It is suggested that Fund #274 be used for this purpose. (If more than one CDBG fund exists, use 274.1, 274.2, 274.3)

Once the fund is established, an appropriate general ledger should be built. The following accounts are necessary:

101

Cash

122	Accounts Receivable
132	Due from Block Grant Program
171	Estimated Revenues
202	Accounts Payable
204	Contracts Payable (if applicable)
204.5	Contracts Payable - Retained Percentage (if applicable)
206.2	Accrued Wages Payable
241	Appropriations
243	Encumbrances
244	Reserve for Encumbrances
271	Fund Balance
3---	Revenue Accounts
4---	Expenditure Accounts

The above is neither an exhaustive list nor will every entity find it necessary to include all of the account numbers listed. An effort should be made to maintain all of the accounts necessary to provide the information for the Town System monthly reports and to meet grant reporting requirements.

The HUD manual requires that CDBG revenues be segregated by source. It is especially important that any local contributions (or matching portion) be recorded separately from State draws. The following revenue source numbers are suggested for revenue received from State draws:

331.3	Housing and Urban Development
	or
331.23	Community Development Block Grant

The manner in which any local contribution may be financed will

determine the revenue source number to be used. If, for example, the local money is to come from another fund in the form of a transfer, the number 383 - Transfers from \_\_\_\_\_ Fund may be used. (This transfer could possibly be made from the General fund or Revenue Sharing fund for example.) In the event revenues that may be used at the discretion of the local governing body are deposited directly into the CDBG fund, use the revenue source number for that particular revenue. Two of these discretionary revenues are 334.65 Severance Tax and 332.1 Federal Revenue Sharing.

Depending on the purpose of the grant, there is probably sufficient detail available in the existing expenditure accounts and object numbers to provide an adequate description of CDBG expenditures. Care should be taken when choosing expenditure account numbers so that reporting requirements will be met. It may be necessary for the administering entity to make use of more detailed expenditure levels than it is accustomed to. If, for example a grant is given to expand a sewer system, the following expenditure accounts may be used:

- 430.62            Facilities - to account for a new office or shop
- 430.63            Collection and Transmission - to account for cost of sewer lines
- 430.64            Treatment and Disposal - to account for cost of sewage lagoons and treatment facilities

The objects of expenditure used with the above expenditure accounts should also include enough detail to enable reporting to be done as required by the grantor.

#### ACCOUNTING RECORDS

The accounting records required for CDBG are essentially the



same as those required for the Town System. Those records are listed and discussed below. Two main types of records are included in the discussion. Books of original entry are those records in which various transactions are formally recorded for the first time, such as the Cash Receipts Register, Cash Disbursements Register and the General Journal Voucher. Where mechanized bookkeeping methods are used, it may happen that one transaction is recorded simultaneously in several records, one of which may be regarded as the book of original entry. Books of final entry are the summary records in which accounting information is accumulated for financial reporting such as the General Ledger and the Fixed Asset Ledger. The following is only a discussion of the required records already in use by entities on the Town System.

Cash Receipts Register - all receipts for cash that are deposited to a fund are recorded in this journal.

Cash Disbursement Register or Journal of Treasurer's Disbursements - all cash disbursements are recorded in this journal. The method in which claims are processed will cause the means by which expenditures are recorded to vary. Encumbrance accounting will be explained later in this discussion.

General Journal Voucher - a voucher provided for the recording of certain transactions or information in place of or supplementary to the journals or registers. The General Journal Voucher usually contains an entry or entries, explanations, references to documentary evidence supporting the entry or entries, and the signature or initials of one or more

properly authorized officials. General Journal Vouchers are usually maintained in a file or loose leaf binder.

General Ledger - A book of final entry which contains the accounts needed to reflect, in summary and in detail, the financial position and the results of financial operations of a governmental unit.

Fixed Asset Ledger - a listing or card-file inventory of all fixed assets acquired using CDBG monies. Since under the Town System, fixed assets are not accounted for in Special Revenue Funds, it will become necessary, at the end of the reporting period to properly account for any property acquired under the CDBG program to which the local government retains title. Any fixed assets recorded in the ledger should meet all criteria established in the local governmental unit's capitalization policy. This is explained in more detail later in the discussion.

#### ADDITIONAL ACCOUNTING RECORDS

Among accounting records that should be maintained to enhance or facilitate CDBG reporting are:

CDBG Federal Cash Control Register - This register, though not provided for in the Town System, is used to summarize the status of federal cash on hand. It will document and control the following:

- requests for payments (drawdowns on the letter of credit);
- U.S. Treasury checks received;
- collections, refunds and miscellaneous receipts;
- disbursements; and
- balance of federal cash on hand.

Frequent review of this register will help determine whether an

entity is in compliance with the \$5,000/3 day rule. This register will also serve as a cross-check of certain general ledger accounts.

Statement of Expenditures and Encumbrances Compared with Appropriations - This report is required for the Town System reporting and is prepared monthly. Its purpose is to reflect the unencumbered/unexpended balance of each budgeted account. This statement is an important analytical tool for control of expenditures. For instance, it is often used to determine those expenditure categories which have incurred expenditures larger than anticipated. This statement, then serves as a tool for decision making by department heads or executives who control a program.

Statement of Estimated and Actual Revenue - This report is required for the Town System reporting and is prepared for all budgetary funds on a monthly basis. It is important that the governmental unit recognize during the course of the year whether revenues are being collected at a proper rate. A comparison of monthly revenues with past estimates will provide a prompt notice that actual collections are falling behind estimates. With this information, management can take the appropriate steps to satisfy itself as to the reasons for the lack of revenue, and if necessary, adjust the rate and/or amount of expenditures.

Source Documents - The details of accounting transactions are initially recorded on source documents. Source documents can be either internally or externally generated. Information from

these documents is used to post to books of original entry. These documents are filed by document numbers. These files must be retained for a period of three years after program close-out. Included among source documents are: purchase orders; time cards; claims; travel vouchers; and general journal vouchers.

Files - It is necessary to keep several open files on source documents to facilitate control. Most entities keep files of unpaid claims, employee payroll records, contracts and purchase orders. Maintaining the open files will enable an entity to accumulate information for year-end accruals. After source documents have been processed, they should be transferred to permanent files where they are filed numerically by document type.

#### ADDITIONAL CONSIDERATIONS

Because its resources are authorized by a governing body and destined for public purposes, the primary responsibility of local government is to provide essential information and controls to assure the local governmental governing body, the local taxpayer, and other governmental agencies that the local entity has carried out executive and legislative intent. In addition, full disclosure of the financial operations of the governmental unit is necessary. Legal compliance with pertinent restrictions and information needs mandate an accounting system that will adequately meet those requirements. The following are additional considerations that will enable an entity to meet CDBG accounting and reporting standards.

Recording the Budget - Though most entities do record their

adopted budgets in the revenue and expenditure subsidiary ledgers, recognition of the budget is not given in the general ledger. During the fiscal year actual revenue collections need to be compared periodically with budgeted collections in order to evaluate both actual performance and budgeting techniques. Similarly, the actual expenditures need to be compared with appropriations. Two basic requirements must be accomplished to record the budget's provisions:

- 1) The total amount of expenditures authorized by the legislative body must be recorded by a credit to Appropriations #241.
- 2) The resources provided or contemplated by the legislative body for financing the authorized expenditures must be recorded by a debit to Estimated Revenues #171.

Estimated Revenues and Appropriations are control accounts supported by the subsidiary ledgers in which local government entities have been recording their adopted budgets. At the time the budget is adopted and recorded in the general ledger, it may be necessary to record any difference between Estimated Revenues and Appropriations by an offset to Fund Balance. For example, if an entity adopts a revenue budget totaling \$60,000 and appropriations totaling \$57,000, the following entry will be used to record the budget in the CDBG Fund:

		DR	CR
274-117	Estimated Revenue	\$60,000	
274-271	Fund Balance		\$ 3,000
274-041	Appropriations		\$57,000

Closing entries are made at year-end to reverse the above entry.

Encumbrance Accounting - To avoid exceeding the amount

authorized to be spent for goods and services, it is important to maintain a record, not only of expenditures already incurred, but also of commitments made against expenditure accounts. Hiring employees, issuing purchase orders, or signing contracts give rise to contingent liabilities which will become actual liabilities when goods or services are received. In order to keep track of purchase orders and contracts outstanding it is recommended that an encumbrance system be established. Since salaries and wages can definitely be determined in advance, personal service costs are not encumbered. If, for example, a purchase order is issued for materials and supplies in the amount of \$300,000, the following entry illustrates the recording of the possible liability:

274-243	Encumbrances	DR	CR
		\$300,000	
274-244	Reserve for		\$300,000
	Encumbrances		

As the materials are received and claims are paid, the encumbrance is reversed and the expenditure recognized. In the event the claim amount differs from the amount encumbered, the amount of the original encumbrance is reversed and the actual expenditure is recognized. An illustration follows assuming the claim for the above example is \$297,000 (which is immediately paid):

274-244	Reserve for	DR	CR
		\$300,000	
	Encumbrances		
274-243	Encumbrances		\$300,000
274-4--	(Expenditure	\$297,000	
	Account)		

274-101      Cash

\$297,000

At year end, any balance remaining in the Encumbrance and Reserve for Encumbrance accounts will be closed with reversing entries. At this point, liabilities should be recognized for any encumbrances that will actually be converted to claims against the entity. Any other encumbrances may be reappropriated for during the next year.

Year End Accrual - Generally accepted accounting principles for governmental units require that expenditures should be recognized in the accounting period in which the fund liability is incurred. The accrual basis of accounting results in accounting measurement based on the substance of transactions, rather than when cash is received or disbursed, and thus enhances the timeliness, completeness, and comparability of financial statements. Many accrual entries are presently handled on the Town System through timely entries to various receivable and payable accounts. These entries are made for revenue recognition (i.e. taxes and utility charges) and for expenditures such as interest and principal on bonded or contractual debt.

There are other transactions that require the use of accrual entries, that could be handled on the system in a similar manner, however, in the interest of time and efficiency these accrual entries can be adequately handled through year-end adjustments. Any goods and/or services received prior to close of business at year-end that will not be paid until the subsequent period incur a liability of the current period and



should be accrued to reflect the proper expenditure.

As an example, \$2,500.00 worth of CDBG vendor invoices and/or claims is received prior to June 30, 1982, for goods or services received. The liability represented by these claims or invoices should be accrued in the 1982 fiscal period as follows:

		DR	CR
274-4--	(Expenditure Account)	\$2,500	
274- 202	Accounts Payable		\$2,500

(Remember that the appropriate subsidiary expenditure accounts must also be posted.)

It is also necessary to accrue such items as utility bills and payroll if these items are not paid for at year-end.

When the warrant is written, the accounts payable is then liquidated:

		DR	CR
274-202	Accounts Payable	\$2,500	
274-101	Cash		\$2,500

A similar process is followed when recognizing revenues through accrual entries. An accounts receivable is established when the revenue is recognized.

		DR	CR
274-122	Accounts Receivable	\$5,000	
274- ---	(Revenue Account)		\$5,000

The accounts receivable is then liquidated when cash is received.

		DR	CR
274-101	Cash	\$5,000	
274-122	Accounts Receivable		\$5,000

Purchasing - An effective purchasing system can achieve the objective of economical and efficient use of available dollars.

A properly implemented purchasing system will, when tied to an



encumbrance system, help to account for the portion of the budget that has been committed for goods and/or services. The governing body should legislate a purchasing policy. This policy will provide information to vendors, salesmen and department heads as to their individual responsibilities and methods to be followed when purchasing for the local government. A purchasing policy should contain the following elements:

- A. Designating person(s) authorized to make purchases and to determine that the item actually is required and, that it is required in the quantity ordered.
- B. Requiring use of the approved forms for purchasing such as purchase requisitions, purchase orders, bid requests, receiving reports, etc.
- C. Requiring approval by the accounting department to indicate that there is sufficient balance in the unencumbered appropriation and that the expenditure is in accordance with the purpose of the appropriation.
- D. Outline procedures for emergency and small item purchases without prior approval.
- E. Requiring competitive bids for purchases over a stated amount as specified by local ordinances or state or federal law.

Fixed Assets - Local government fixed assets are classified into two basic categories according to usage:

- A. Those related to the revenue-producing activity of an Enterprise Fund, Internal Service Fund, or Trust Fund which

are directly recorded as assets of the using fund.

- B. The General Fixed Assets not related to a specific service, from which revenue is obtained, are recorded in the General Fixed Assets Account Group.

As a CDBG Fund is closed, or at year end, those fixed assets in which title remains with the local government should be recorded according to the above guidelines. Each asset should be recorded in the subsidiary asset inventory cards following the criteria established by the local capitalization policy. The contribution by the CDBG Fund should be noted on the inventory cards and recognized on the General Ledger. If the asset is to be recorded in the General Fixed Asset Account Group, the following entry is made using the acquisition of a piece of equipment for example:

	DR	CR
950-186 Machinery & Equipment	\$15,000	
950-285-1 Investment in General		
Fixed Assets - CDBG Funds		\$15,000

Should the asset be recorded in an Enterprise Fund as would be water improvements, the following entry is made which recognizes the CDBG contribution:

510-189.4 Transmission & Distribution	\$150,000	
510-261.1 Contribution from CDBG		
Grant		\$150,000

Care should be taken to off-set any depreciation expense related to Enterprise Fund contributed assets against the contribution accounts.

## FEDERAL CASH CONTROL REGISTER

FEDERAL FISCAL YEAR

REQUEST FOR PAYMENT SUBMITTED				U.S. TREASURY CHECKS RECEIVED			COLLECTIONS, REFUNDS, AND/OR MISCELLANEOUS RECEIPTS			DISBURSEMENTS			BALANCE OF FEDERAL CASH ON HAND	
DOCUMENT NUMBER	DATE OF REQUEST	AMOUNT REQUESTED	CUMULATIVE AMOUNT FY TO DATE	DATE DEPOSITED	CHECK AMOUNT	CUMULATIVE AMOUNT FY TO DATE	DATE DEPOSITED	CHECK AMOUNT	CUMULATIVE AMOUNT FY TO DATE	DATE DISBURSED	AMOUNT	CUMULATIVE AMOUNT FY TO DATE	DATE	AMOUNT
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
SF 183-1	11/1	5,000.00	5,000.00	11/9	5,000.00	5,000.00	11/10	1,000.00	1,000.00	11/10	2,850.00	2,850.00	11/9	5,000.00
101										11/12	2,577.20	5,227.20	11/10	6,000.00
CR1										11/13	772.80	6,000.00	11/12	3,350.00
CDR													11/11	772.80
CDR													11/13	0
CDR														
Posting Totals				11/30	5,000.00	G/L Post	11/30	1,000.00	G/L Post	11/30	6,000.00	G/L Post	Balance	0

[illegible]

AGENCY STATION SYMBOL (1)	LETTER OF CREDIT NUMBER (2)	DOCUMENT NUMBER (3)	AMOUNT REQUESTED \$ (4)
NAME AND ADDRESS OF U.S. AGENCY	NAME AND ADDRESS OF DRAWER		PAID BY (Treasury Use Only)
(5)	(6)		
NAME AND ADDRESS OF TREASURY DISBURSING OFFICE	MAKE TREASURY CHECK PAYABLE TO:		
(7)	(8)		VOUCHER APPROVED (Treasury Use Only)
			CHECK NUMBER (Treasury Use Only)

ITEMS	ESTIMATED NO OF DAYS SUPPLY	AMOUNT
1. FEDERAL FUNDS ON HAND <i>(Beginning of Federal Fiscal Year)</i>		\$ (1)
2. ADV. ADVANCES RECEIVED, FISCAL YEAR TO DATE		(2)
3. ADV. COLLECTIONS, REFUNDS, AND/OR MISCELLANEDUS RECEIPTS		(3)
4. Subtotal		(4)
5. LESS ACTUAL DISBURSEMENTS, FISCAL YEAR TO DATE		(5)
6. FEDERAL FUNDS ON HAND AT TIME OF THIS REQUEST	(6b)	(6a)
7. ADD AMOUNT OF THIS REQUEST FOR PAYMENT	(7b)	(7a)
8. ADD UNPAID REQUESTS FOR PAYMENT PREVIOUSLY SUBMITTED		(8)
9. TOTAL _____ →		\$ (9)
10. OUTSTANDING ADVANCES TO SUB-GRANTEES—NUMBER	TOTAL \$	Treasury Use Only

PROGRAM, GRANT NO. OR OTHER IDENTIFYING NO.	AMOUNT	PROGRAM, GRANT NO. OR OTHER IDENTIFYING NO.	AMOUNT
	\$	Administration Project	\$ (1) (2)
TOTAL (Must Agree with Amount of this Request for Payment)			\$ (3)

I certify that this Request for Payment has been drawn in accordance with the terms and conditions of the Letter of Credit cited and that the amount for which drawn is proper for payment to the drawer or for credit to the account of the drawer at the drawer's bank. I also certify that the data reported above is correct and that the amount of the Request for Payment is not in excess of current needs.

DATE	SIGNATURE	TITLE
DATE	COUNTERSIGNATURE	TITLE



EXHIBIT IV-D

INSTRUCTIONS - SF 183

Section I - Request for Funds

1. AGENCY STATION SYMBOL. Leave Blank.
2. LETTER OF CREDIT NUMBER. Enter 86-00-0007.
3. DOCUMENT NUMBER. Number consecutively beginning with "1".
4. AMOUNT REQUESTED. Must be the same as Line 7 of Section II and total of Section III.
5. NAME AND ADDRESS OF ISSUING AGENCY. Enter "U.S. Department of Housing and Urban Development/Montana Department of Commerce.
6. NAME AND ADDRESS OF DRAWER. Enter grantee's mailing address exactly the same as shown on the Designation of Depositary Card.
7. NAME AND ADDRESS OF TREASURY DISBURSING OFFICE. Leave Blank.
8. MAKE CHECK PAYABLE TO. Must be exactly the same as on the Designation of Depositary Card.

Section II - Status of Funds

1. FEDERAL FUNDS ON HAND. Enter the amount of dollars on hand at the beginning of the project (for most projects this will be ZERO.)
2. ADD: ADVANCES RECEIVED. Enter the amount of CDBG funds (cash) received to date.
3. ADD: COLLECTIONS, REFUNDS, AND/OR MISCELLANEOUS RECEIPTS. Enter any program income or miscellaneous revenue received.
4. SUBTOTAL.
5. LESS ACTUAL DISBURSEMENTS, FISCAL YEAR TO DATE. Subtract the amount of funds (cash)) expended to date on CDBG projects.
- 6a. FEDERAL FUNDS ON HAND. Enter the cash balance in the CDBG federal depositary. (Line 4 minus Line 5.)
- 6b. ESTIMATED NO. OF DAYS SUPPLY. Give the estimated number of days it will take to disburse the federal funds on hand.
- 7a. AMOUNT OF THIS REQUEST. Enter the amount of funds requested.
- 7b. ESTIMATED NO. OF DAYS SUPPLY. Estimated number of days it will take to disburse funds requested on this draw.

8. ADD: UNPAID REQUESTS FOR PAYMENTS PREVIOUSLY SUBMITTED.
9. TOTAL.
10. OUTSTANDING ADVANCES TO SUBGRANTEES. Leave Blank.

Section IIa -- Remarks

Leave Blank. This section is reserved for counter-signatures by DOC officials.

Section III - Classification

1. Enter the amount of cash requested this draw for administrative expenditures.
2. Enter the amount of cash requested this draw for project expenditures.
3. Enter the total amount of cash requested this draw. (Must agree with Section I, Line 4, and Section II, Line 7.)

Section IV - Certification

Two of the three authorized signatures from the grantee are required, along with date signed and titles of the officials. These must be exactly as shown on the Signature Certification form.



## EXHIBIT IV-E

## BUDGET SUMMARY FORM

A Line #	B Line Items As Shown In Contract Budget	C Amount Budgeted In CDBG Contract	D Amount Expended Last Drawdown	E Total Expended To Date	F Funds Remaining	G Amount Requested This Drawdown
	ADMINISTRATION					
1.		\$	\$	\$	\$	
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.	TOTAL ADMINIS- TRATION	\$	\$	\$	\$	\$
14.	Percent	%		%		
	PROJECT					
15.		\$	\$	\$	\$	
16.						
17.						
18.						
19.						
20.						
21.	TOTAL PROJECT	\$	\$	\$	\$	\$
22.	Percent	%		%		
23.	TOTAL PROGRAM	\$	\$	\$	\$	\$
24.	Cash On Hand (All Sources)		\$	\$		\$
25.	Requests Pre- viously Submitted					\$
26.	TOTAL		\$	\$		\$



EXHIBIT IV-F  
PROJECT PROGRESS REPORT

NAME: \_\_\_\_\_

GRANT/CONTRACT NO.: \_\_\_\_\_

DRAW NO.: \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Administration: Amount requested \$ \_\_\_\_\_

(Include a brief explanation of the administrative tasks undertaken to date. This might include discussions of: salaries or wages incurred to date, administrative contract expenses incurred or anticipated, and/or other related administrative expenses.)

Project: Amount requested \$ \_\_\_\_\_

(Include a brief discussion of progress associated with project activities. This might include a discussion of: the activities currently under construction, the amount of work completed to date, and the problems or difficulties encountered.)



# **Chapter V**

## **Civil Rights**



## CHAPTER V

### CIVIL RIGHTS

#### OVERVIEW

The civil rights requirements associated with CDBG funding are intended to ensure equal opportunity for minorities. In general, these laws have the basic purpose of protecting specific groups and/or individuals from discrimination on the basis of:

- race;
- national origin;
- religion;
- color;
- sex;
- age;
- physical or mental handicap;
- marital status; and
- political ideas.

Identified groups included under these categories include:

- minorities (i.e., Blacks, Hispanics, Asians and Pacific Islanders, American Indians, and Alaskan Natives);
- women;
- groups distinguished by age (e.g., elderly, teenagers); and
- handicapped persons (having mental and/or physical handicaps).

For purposes of the CDBG program these groups are protected against discrimination in the following areas:

- housing;
- benefits resulting from activities funded in full or in part by CDBG dollars;
- employment; and
- business opportunities.

#### APPLICABLE LAWS, REQUIREMENTS AND POLICIES

Civil rights compliance and monitoring responsibilities are contained in the following listing of federal laws, executive orders, regulations and policies. Copies of the following federal requirements are included in the Requirements Notebook along with other applicable civil rights requirements which grantees must comply with.

##### -- TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Objective -- to ensure that no person is excluded from participation in, denied the benefit of, or subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color, or national origin.

Relevant Features -- The purpose of this Title is to withhold federal funds from grantees undertaking discriminatory practices.

##### -- TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968, AS AMENDED

Objective -- to provide for fair housing within constitutional limitations. Prohibits discrimination in the sale or rental of units in the private housing market against any person on the basis of race, color, religion, sex or national origin.

Relevant Features -- Requires that projects be administered in a manner that affirmatively promotes fair housing. Enforcement procedures are triggered by a complaint of Title VIII violations.



-- SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968, AS AMENDED

Objective -- to provide training and employment opportunities, to the extent practicable, to lower-income residents of the project area. To provide contracts associated with a CDBG funded project to businesses located in the project area or to businesses owned, in substantial part, by residents of the project area.

Relevant Features -- project area is defined as the "unit of local government, metropolitan area, or non-metropolitan county" in which the project is located.

-- SECTION 109 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1974, AS AMENDED

Objective -- to ensure that no person be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part under Title I of the HUD Act on the basis of race, color, national origin, age, handicap, or sex.

Relevant Features -- the HUD regional office retains primary responsibility for compliance monitoring related to civil rights requirements.

-- AGE DISCRIMINATION ACT OF 1975, AS AMENDED

Objective -- to prohibit age discrimination in programs receiving federal financial assistance.

Relevant Features -- compliance procedures are triggered by a complaint. Proof of non-compliance is the responsibility of the funding agency.

-- SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

Objective -- to ensure that no otherwise qualified individual is solely, by reason of his or her handicap, excluded from participation in, the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance.

Relevant Feature -- HUD retains responsibility for compliance monitoring.

-- ARCHITECTURAL BARRIERS ACT OF 1968, AS AMENDED

Objective -- to ensure that certain buildings, and public conveyances financed with federal funds are designed, constructed, or altered as to be accessible to the physically handicapped.

Relevant Features -- buildings and facilities are defined as those intended to be accessible to the general public. Exclusions include private residential structures and the providing of guaranteed/insured loans.

-- EQUAL EMPLOYMENT OPPORTUNITY -- EXECUTIVE ORDERS 11246 and 11375

Objective -- to ensure that no employer performing construction work for a recipient of federal assistance discriminates against any employee or applicant for employment on the basis of race, color, religion, sex, or national origin. (E.O. 11375 amended 11246 to include sex as a basis for discrimination.)

Relevant Features -- assistance is defined as a grant, contract, loan, insurance, or guarantee. Total value of a contract or subcontract is defined as both federal assistance and other public or private funds. Exclusions include contracts and subcontracts that do not or are not expected to exceed a total value of \$10,000 over a 12 month period, and employment preferences for Indians on contracts or subcontracts on or near an Indian reservation.

-- EQUAL OPPORTUNITY IN HOUSING -- EXECUTIVE ORDER 11063

Objective -- to prohibit discrimination in housing or residential property financing related to any federally assisted activity against individuals on the basis of race, color, religion, sex or national origin.

-- HUMAN RIGHTS -- Title 49, MCA

State law prohibiting discrimination and providing for enforcement.

-- MINORITY BUSINESS PARTICIPATION

Objective -- It is HUD policy for the State to insure that a fair share of subagreements are awarded to minority businesses.

Relevant features -- Grantees are required to take affirmative steps in utilizing minority businesses on projects involving CDBG funds.

LOCAL GRANTEE RESPONSIBILITIES

Overview

This section provides an overview of the general areas of civil rights and fair housing compliance for which grantees are responsible. These general requirements apply to the administration of the grant activities as well as to the three major program areas: public facilities, housing and economic development.

Grantees are required to take responsible actions directed toward the following two categories:

- non-discrimination and equal opportunity; and
- affirmative action to remedy and overcome the effects of past discrimination.

When grantees contract with private or public entities for either the administration of the CDBG program or for actual project implementation (e.g. construction of a public facility), the grantee must provide the contractor with non-discrimination and equal opportunity information and must monitor the contractors to ensure that all required actions are taken. A more detailed list of the grantee's and contractor's responsibilities is be provided in Chapter VIII, Public Facilities Projects.

#### Non-Discrimination

Under the non-discrimination requirements, the grantee must assure that all CDBG funded activities are conducted in such a manner that no person or group is denied benefits such as employment, training, housing, and contracts generated by the local CDBG activity.

#### Affirmative Action

The purpose of affirmative action is to overcome the effects of past discrimination. Affirmative actions (presented in an affirmative action plan) must be taken any time there has been a finding against the locality as a result of a compliance review conducted by the State CDBG staff as part of its monitoring responsibilities or as the result of any discrimination complaint investigation carried out by the HUD Regional Fair Housing and Equal Opportunity (FHEO) Office. The plan must identify the effects of the past discrimination and specify those actions the locality will take in order to overcome the identified impacts. Exhibit V-A provides an outline format for an affirmative action plan.

In some cases, even without a formal finding, the grantee should consider affirmative actions to address self-identified instances of possible discrimination or where the intent of the equal opportunity provisions have not been met. For instance, if local government employment is not representative of the general population of the

jurisdiction, the CDBG project manager or administering agency should consider designing an affirmative action program to provide greater employment, training, and promotion opportunities for members of protected groups.

#### General Project Benefits

There are a broad range of issues associated with documenting that general project benefits are extended to all groups in a non-discriminatory manner.

They primarily originate from application of Section 109 and Title VI requirements. (Exhibit V-B provides a form for the collection of data on protected groups.) The following issues should be taken into consideration by the grantee.

Were the needs of protected groups included in the needs assessment prepared as part of the CDBG application? How did the needs of these protected groups compare with local priorities identified in the needs assessment?

Was information about the proposed CDBG application available to all residents of the community? What efforts were made to ensure that protected groups were involved in planning CDBG funded activities?

Were members of protected groups adequately informed about any public meetings on the CDBG project? The Montana CDBG Program requires that the applicant at the least must hold one public hearing before preparing the application and one prior to submission. Were the public hearings held at a location that was easily accessible to members of protected groups and at reasonable hours?

Were the needs of protected groups included in the individual and community-wide benefits that would be generated as a result of the CDBG activities? For example, if the locality is acquiring land for a

senior citizens center, will the chosen location be equally accessible to neighborhoods with large concentrations of minority residents as to those with high concentrations of non-minority households?

#### Data and Documentation

The grantee should maintain the following:

- socioeconomic data used for project planning;
- records of public hearings;
- evidence of meetings with neighborhood groups;
- evidence of meetings with groups representing minority interests or women; and
- data on benefits to protected groups (see Exhibit V-B).

For some projects it is quite simple to document the specific extent to which protected groups within the community are participating in and receiving benefits from the block grant activity. For instance, CDBG funding of a local rehabilitation program is awarded based on information and targets provided in the grant application. It is easy to identify the extent to which protected groups will be impacted by the housing rehabilitation program. It is equally easy to then report on how many households headed by minorities, women the elderly, or handicapped individuals were actually rehabilitated.

For other types of projects, identifying the targets and beneficiaries may not be as simple. A downtown revitalization program may be intended to benefit protected groups; however, the extent to which these groups is actually impacted is harder to control by the administering agency. At the minimum, the locality should take those actions to ensure that members of the protected groups have equal access to any information related to training and job opportunities associated with the CDBG-funded project.

## Employment

Civil rights requirements pertaining to employment originate primarily from Section 109 and Executive Order 11246.

Exhibit V-C provides "A Human Rights Guide for Employers," prepared by the Montana Human Rights Commission. Exhibit V-D provides a "Sample Application for Employment" form, and V-E is an "EEOC Guide to Pre-Employment Inquiries." Exhibit V-F provides a sample format for "Interview and Hiring Records." The guidance offered in these four exhibits should be useful to grantees.

The grantee should consider the following issues:

Does the grantee have explicit written personnel policies which prohibit discrimination against protected groups? Does the grantee have a strategy for employment, training, and promotion of protected groups? Do the job descriptions and organization of the CDBG administering unit reflect this strategy? When advertising to fill a vacancy or new position, has the grantee included explicit language indicating that the locality is an equal opportunity employer?

Have members of protected groups shared in the employment benefits generated by the CDBG-funded activities?

Has the grantee informed all contractors associated with the CDBG project that they must adhere to all equal opportunity requirements? Did the grantee include the required EEO language in all contracts?

Has there been any finding of past discrimination as the result of a compliance review? If so, has the grantee prepared an affirmative action plan to overcome the effects of past discrimination?

## Data and Documentation

The grantee should maintain the following:

- personnel policies;
  - organization chart of the CDBG administering unit;
  - interview and hiring records (Exhibit V-F);
  - employee records (training, promotion, salary levels); and
  - data on overall employment of women and minorities.
- (Exhibit V-G provides an acceptable grantee employment summary form that may be used.)

## Business Opportunities

Requirements pertaining to business opportunities originate primarily from Section 3, OMB Circular A-102, Attachment D, and HUD policy on Minority Business Participation. The grantee should consider the following issues.

Did the grantee have a strategy for utilizing businesses located in the project area or owned by residents of the project area? (Exhibit V-H contains a sample contractor's Section 3 plan and related forms which may be used.) Was there a strategy for using businesses owned by members of protected groups? Was information about RFPs and solicitation of bids equally available to members of protected groups? To what extent were businesses owned by residents or members of protected groups actually utilized as part of the CDBG-funded project?

Were there findings of past discrimination or non-compliance as a result of a compliance review? If so, does the grantee have an affirmative action plan to address these findings?

Were all required clauses included in both bid packages and contracts? Has the grantee made provisions for monitoring contractor performance? Detailed information related to preparing bids and contracts and monitoring contracts is provided in Chapter VIII, Public Facilities Projects.



Compliance with HUD and DOC policy regarding utilization of Minority Business Enterprises (MBE) can be achieved if the grantee takes the following affirmative steps:

- including qualified minority businesses on solicitation lists;
- assuring that minority businesses are solicited whenever they are potential sources;
- dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of minority businesses;
- establishing delivery schedules, where the requirements of the work permit, which will encourage participation by minority businesses;
- using the services and assistance of the Montana Department of Highways, Minority Business Enterprise Section, the Small Business Administration and/or the resources of any other State or federal agency in soliciting MBE participation;
- requiring each party to any subagreements entered into for the completion of CDBG funded activities to take the affirmative steps listed above; and
- maintaining records on the use of Minority Business Enterprise for CDBG funded contracts and subcontracts. (Exhibit V-I provides an acceptable format for data retention.)

#### Data and Documentation

The grantee should maintain the following:

- copies of notices of bids and RFPs;
- copies of RFPs and bid packages;
- distribution lists of bids and RFPs;
- copies of contract files;
- data on the dollar amount of contract awards; and
- data on the awards to businesses located in the project area or owned by members of protected groups.

## Fair Housing

Civil rights requirements pertaining to fair housing originate primarily from Title VIII and Executive Order 11063. The grantee should consider the following issues.

Has the grantee met with representatives of local housing groups? Does the grantee have a strategy for dissemination of information and distribution of materials related to fair housing requirements? Does the grantee provide outreach and counseling services related to fair housing practices? Are these services equally accessible to members of protected groups?

If applicable, do local land use and zoning laws have discriminatory effects on housing patterns? If applicable, has the grantee previously purchased property and/or structures for assisted housing projects outside of areas of minority concentration?

Did members of protected groups receive equal treatment when applying for and receiving housing assistance? For example, were terms and rates of housing assistance loans the same for minorities and non-minorities? Were grant maximums the same for all groups?

Has there been any fundings of non-compliance as the result of reviews of past activities? If so, has the grantee prepared an affirmative action plan to overcome the effects of past discrimination?

## Data and Documentation

The grantee should maintain the following:

- data on general housing characteristics;
- data on housing assistance provided to minorities (type, number, dollar amounts, terms and rates;
- data on assisted housing outside of areas of minority concentrations;

- actions taken to promote fair housing (See Exhibit V-J);
- copy of local land use and zoning laws;
- data of outreach and counseling efforts; and
- copy of fair housing materials prepared and distributed.

Other specific requirements and samples of materials related to housing activities are provided in Chapter IX, Housing Rehabilitation Projects.

#### Other Civil Rights Issues

The following additional issues should be considered, when applicable:

If a project required displacement or relocation of households or businesses, were protected groups given equal treatment? Were members of protected groups offered the same services related to relocation counseling? Were they given equal treatment in determination of relocation payments?

#### Data and Documentation

The grantee should maintain the following:

- data on number of households/business displaced or relocated;
- records of assistance provided; and
- file of documentation for each relocation case (see Chapter VII, Acquisition/Relocation).

#### MONITORING OF LOCAL GRANTEES

Monitoring by the State CDBG staff of local grantees will be tempered by historical and existing conditions or extenuating circumstances with the jurisdiction. If, for example, local employment analysis shows that there is a historically low level of

female participation in the local labor force (e.g., many women have chosen not to seek employment), that factor would be taken into account when monitoring the extent to which women received employment benefits from CDBG-funded activities.

While the State CDBG staff is responsible for monitoring of general civil rights and fair housing compliance by grantees, the Secretary of HUD remains the designated authority for the investigation and resolution of specific complaints of discrimination or non-compliance.

A complaint may be filed with the HUD regional FHEO office by any person or class of persons within 180 days of the alleged discriminatory action. After contact with the complainant to clarify the issues, the FHEO investigator will contact the grantee concerning the complaint and schedule a compliance review visit. Based on interviews and information gathered during the compliance review the investigator will prepare a report and analysis of the complaint.

If there is no finding of a Title VI violation, the regional FHEO will provide notice to the grantee and the complainant of the finding and no further action by the grantee is required.

If there is a finding of non-compliance, the regional FHEO office will inform the grantee of the finding and may first seek an informal and/or voluntary resolution of the complaint. This is accomplished through a "Voluntary Compliance Plan" by which the grantee will resolve the impact of the discriminatory action. The Plan must be approved by the regional HUD FHEO office.

If an informal solution cannot be reached, the regional office send the compliance review report and all supporting documentation related to the case to the Central FHEO for the beginning of formal enforcement procedures. These procedures can result in the termination of federal assistance to the grantee and deferral of any future assistance until the finding is resolved.

HUD has indicated that every effort will be made to reach informal solutions to non-compliance findings. Additionally, upon receipt of a complaint the regional FHEO office will contact the State CDBG Program staff to assist in seeking an informal solution to the complaint, if required.

#### SUMMARY

1. Grantees must assure that all CDBG-funded activities are conducted in a manner which will not cause discrimination on the basis of race, color, national origin, religion and creed, sex, physical or mental handicap, age, marital status, or political ideas. This includes action taken directly by the grantee (e.g. employment) or through contractual or other arrangements.
2. Grantees must take affirmative action to overcome the effects of past discrimination in the administration of CDBG projects which have been found as the result of a compliance review. This might include actions such as the development of an affirmative action plan.
- 3.a. With regard to employment, grantees must:
  - to the maximum extent feasible, ensure that lower-income residents in their communities receive any training or employment generated by CDBG projects; and
  - take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex, or national origin.
- 3.b. With regard to contracting, grantees must:
  - take affirmative action to utilize businesses located in or owned in substantial part by persons residing in the project area;

- take affirmative action to encourage contracting with minority business enterprises; and
  - maintain documentation of contract and subcontract awards.
4. Grantees should take positive steps to promote fair housing.
5. Grantee should maintain the following information as documentation of compliance with civil rights requirements.
- Population: Demographic data by census tract or smaller geographic area. The data should include prevailing population characteristics relating to race, ethnic group, sex, age, and head of household.
  - Employment: Data which record affirmative action in equal employment opportunity. These data would include but not be limited to employment, upgrading, demotions, transfers, recruitment or recruitment advertising, layoffs or terminations, pay or other compensation, and selection for training.
  - Section 3 Employment and Business Opportunities: Data which record special efforts to identify, train, and/or hire lower-income residents of the project area and to utilize business concerns which are located in or owned in substantial part by persons residing in the area of the project.
  - Program Beneficiaries: Individual and site-specific data on the racial, ethnic, and gender characteristics of beneficiaries showing the extent to which minorities, nonminorities, women, and handicapped persons have participated in or benefitted from programs and activities. Numerical data should be maintained by CDBG project, program, and activity.
  - Minority Business Participation: Data which record special efforts to identify, solicit bids from, and provide contracting and investment opportunities to minority businesses.

-- Project Information: Data which indicate types of projects funded (e.g., economic development, housing, public service), location of projects, amount of funds budgeted and expended, and funding cycle and/or dates of project approval.

6. All contracts funded in whole or in part with CDBG funds must contain references to the civil rights provisions outlined in Chapter III, Procurement Standards.





## CHAPTER V

### EXHIBITS

- V-A - Outline for Affirmative Action Plan
- V-B - Minorities Benefit Report Form
- V-C - A Human Rights Guide for Employers
- V-D - Sample Application for Employment
- V-E - EEOC Guide to Pre-Employment Inquiries
- V-F - Interview and Hiring Form
- V-G - Grantee Employment Summary
- V-H - Contractor's Section 3 Plan and Related Forms
- V-I - Minority Business Enterprise Form
- V-J - List of Acceptable Actions to Promote Fair Housing



OUTLINE: AFFIRMATIVE ACTION PLAN

SECTION I. PURPOSE AND AUTHORIZATION:

E.O. 11246 and 11375

SECTION II. DEFINITIONS:

1. EMPLOYER
2. EMPLOYEE
3. AFFECTED CLASS
4. EMPLOYMENT AREA
5. AFFIRMATIVE ACTION
6. CONTRACTOR
7. DEPARTMENT
8. DOC

SECTION III. SCOPE

SECTION IV. OBJECTIVES:

"SAMPLE" AFFIRMATIVE ACTION TO ADVERTISE JOB,  
MONITOR SUCCESS, DEVELOP TRAINING/  
UPGRADING, SECTION 3, EQUAL WAGE, COMPLIANCE  
WITH STATE/FEDERAL ACTS.

SECTION V. POLICY:

TO MAKE PLAN KNOWN, SEEK AFFECTED CLASS,  
NON-DISCRIMINATORY RECRUITMENT, COMPENSATION  
EQUAL, SUB-CONTRACTORS AND CONTRACTOR TO IMPLEMENT

SECTION VI. IMPLEMENTATION:

WHO IS RESPONSIBLE  
CONTACT PERSON

SECTION VII.METHODOLOGY:

- HOW TO IMPLEMENT:
- \* PUBLISH NOTICES TWO WEEKS  
BEFORE EMPLOYMENT
  - \* ASSIST AFFECTED CLASS IN  
COMPLETING APPLICATION
  - \* CONTACT MINORITY EMPLOYMENT GROUP
  - \* NOTIFY MONTANA JOB SERVICE

AFFIRMATIVE ACTION PLAN OUTLINE CONT...

SECTION VIII. DOCUMENTATION:

- HOW TO VERIFY:   \* KEEP JOB APPLICANT LISTS  
                  \* MINORITY CONTRACTORS LIST  
                  \* KEEP NOTICES  
                  \* LIST TRAINING DEVELOPED

SECTION IX. GRIEVANCE PROCEDURE:

FORM:   WRITING

PLACE:

TIME OF FILING: NOT LESS THAN 90 DAYS AFTER ACTION

PROCEEDING:   INVESTIGATE  
                  RESOLVE PROBLEM  
                  HEARING

SECTION X. GOALS

CAN BE EXPRESSED IN TERMS OF PERCENTAGES IF THE  
% IS LIKELY TO BE UNEQUAL, PROVIDE JUSTIFICATION

## MINORITIES BENEFIT REPORT FORM

## SECTION 109 AND TITLE VI

[illegible]

\* Persons residing in the Enumeration District according to the latest U.S. Census figures.

\*\*\* Qualified persons applying (Qualified means meeting the income requirements). Use this category only when activity requires income certification for participation (i.e., housing rehab, payment of special assessments).

\*\*\* Persons actually receiving assistance from the program or activity.



## A HUMAN RIGHTS GUIDE FOR EMPLOYERS

ANY EMPLOYMENT PRACTICE WHICH HAS THE EFFECT OF EXCLUDING PERSONS BECAUSE OF THEIR

AGE	PHYSICAL OR MENTAL HANDICAP	RELIGION
SEX	MARITAL STATUS	CREED
RACE	NATIONAL ORIGIN	COLOR

MAY BE EQUIVALENT TO UNLAWFUL DISCRIMINATION.

### SOME EMPLOYMENT PRACTICES FORBIDDEN BY LAW:

- TO PRINT OR PUBLISH JOB NOTICES OR ADVERTISEMENTS WHICH INDICATE A PREFERENCE FOR A CERTAIN AGE, SEX, RACE, COLOR, RELIGION, NATIONAL ORIGIN OR MARITAL STATUS, UNLESS A BONA FIDE OCCUPATIONAL QUALIFICATION;
- TO ALLOW HARASSMENT OF MINORITIES OR WOMEN BY FELLOW WORKERS;
- TO REFUSE TO HIRE WOMEN BECAUSE THEY HAVE PRE-SCHOOL CHILDREN OR TO FIRE THEM BECAUSE OF PREGNANCY;
- TO ESTABLISH PHYSICAL LIMITATIONS SUCH AS HEIGHT OR WEIGHT WHEN THEY ARE NOT ABSOLUTELY ESSENTIAL TO THE PERFORMANCE OF THE JOB;
- TO REFUSE TO ACCOMMODATE HANDICAPS;
- TO ESTABLISH A MANDATORY RETIREMENT AGE UNLESS THE REASONABLE DEMANDS OF THE JOB REQUIRES IT (E.G. AIRLINE PILOTS);
- TO REQUIRE FLUENT KNOWLEDGE OF ENGLISH WHEN THE JOB DOES NOT REQUIRE LANGUAGE SKILLS.

### SOME EMPLOYMENT PRACTICES YOU MAY WANT TO EXAMINE:

RECRUITMENT, APPLICATION FORMS, INTERVIEWING TECHNIQUES, QUALIFICATIONS REQUIRED, TESTING, SELECTION PROCEDURES, PLACEMENT, PAY RATES, BENEFITS, MANAGEMENT ATTITUDES, PROMOTIONS, LEAVE POLICIES AND TERMINATIONS.

### WHY EXAMINE YOUR PRACTICES?

COMPLAINTS COST TIME AND MONEY.  
YOU WILL IDENTIFY A LARGER AND BETTER QUALIFIED WORKFORCE.  
WHEN MORE PEOPLE ARE FAIRLY EMPLOYED, GOVERNMENT COSTS FOR HUMAN SERVICES SHOULD CORRESPONDINGLY DECREASE.

### IF A COMPLAINT IS FILED

BE CAREFUL NOT TO RETALIATE.  
YOU WILL RECEIVE PROCEDURAL INFORMATION FROM THE DIVISION.  
YOU WILL RECEIVE AN OPPORTUNITY TO PRESENT YOUR SIDE.



# **MONTANA LAW PROHIBITS DISCRIMINATION**

## **IN**

Creed or Religion  
Age  
Sex  
Race, national origin, or color  
Handicap, physical or mental  
Political belief (if Government involved)  
Marital Status

## **AREA**

Employment  
Training or education  
Housing  
Public accommodations  
Financing  
Government services  
Retaliation (for Human Rights Complaint)

**FOR  
INFORMATION  
CALL**

**(406)-444-2884**



**MONTANA  
HUMAN  
RIGHTS  
COMMISSION**

Room C-317, Cogswell Building, Helena, MT 59620

TELEPHONE 406/444-2884



No. 388

443:221

## APPROACHES TO AFFIRMATIVE ACTION

## Sample Application For Employment

*Following is a sample application for employment, which was designed with federal EEO considerations in mind.*

Application for Employment		<u>The Company</u>	
PLEASE PRINT			
Name _____		Date _____	
Social Sec. No. _____			
Street _____			
City _____			
State _____		Zip Code _____	
Area Code _____	Business Telephone _____		
Area Code _____	Home Telephone _____		
How were you referred to us? _____	Newspaper ad Co. Employee	School Agency	On my own Other
Name of referral source _____			
<p>Please note: This application form was designed for use by persons applying for various types of positions with Co —clerical, professional, technical, and administrative. Please answer the questions to the best of your ability. All information will be treated confidentially.</p>			
PLEASE PRINT			

The Company  
AN EQUAL OPPORTUNITY EMPLOYER

## TYPE OF WORK DESIRED

Indicate the position for which you are applying. \_\_\_\_\_

What is your minimum weekly salary requirement? \_\_\_\_\_

Date available for work \_\_\_\_\_

Do you have any commitments to another employer which might affect your employment with us? \_\_\_\_\_

## SKILLS

Typing speed \_\_\_\_\_ words per minute, Steno speed \_\_\_\_\_ words per minute

Can you transcribe machine dictation? \_\_\_\_\_

Business machines you can operate \_\_\_\_\_

Other \_\_\_\_\_

## EDUCATIONAL DATA

Schools	Print Name, Number and Street, City, State and Zip Code for each School Listing	Dates	Type of Course or Major	Graduated?	Degree Received
High School		From _____			
		To _____			
College		From _____			
		To _____			
Graduate School		From _____			
		To _____			
Trade, Bus., Night, or Correspondence		From _____			
		To _____			
Other		From _____			
		To _____			

## MILITARY EXPERIENCE

Were you in U.S. Armed Forces? ☐ Yes ☐ No If yes, what Branch? \_\_\_\_\_

Dates of duty: From: \_\_\_\_\_ To: \_\_\_\_\_ Rank at Separation \_\_\_\_\_

Briefly describe your duties \_\_\_\_\_

## EMPLOYMENT HISTORY

List *present employer or most recent employer* first (use other side of this application, if necessary). May we contact these employers? ☐ yes ☐ no

Employer		Employed		Supervisor's Name
Address		From	Mo/Yr	Your Job Title
Telephone		To	Mo/Yr	
Your Salary		Duties		
Start	End			

## Reason for Leaving

Employer		Employed		Supervisor's Name
Address		From	Mo/Yr	Your Job Title
Telephone		To	Mo/Yr	
Your Salary		Duties		
Start	End			

## Reason for Leaving

Employer		Employed		Supervisor's Name
Address		From	Mo/Yr	Your Job Title
Telephone		To	Mo/Yr	
Your Salary		Duties		
Start	End			

## Reason for Leaving

Employer		Employed		Supervisor's Name
Address		From	Mo/Yr	Your Job Title
Telephone		To	Mo/Yr	
Your Salary		Duties		
Start	End			

## Reason for Leaving

Employer		Employed		Supervisor's Name
Address		From	Mo/Yr	Your Job Title
Telephone		To	Mo/Yr	
Your Salary		Duties		
Start	End			

## GENERAL INFORMATION

Are you a U.S. Citizen? ☐ yes ☐ no If no, what type of visa do you hold? \_\_\_\_\_

Are you between the ages of 18 and 70? ☐ yes ☐ no

Present state of health \_\_\_\_\_

Are you willing to undergo a pre-employment physical exam? ☐ yes ☐ no

Have you previously applied for employment at Co? ☐ yes ☐ no If yes, when? \_\_\_\_\_

Have you previously been employed at Co or its subsidiaries? ☐ yes ☐ no If yes, when? \_\_\_\_\_

Are any of your relatives employed by Co? ☐ yes ☐ no If yes, please list name and department \_\_\_\_\_

Person to be notified in case of emergency

Name \_\_\_\_\_ Telephone \_\_\_\_\_

Address \_\_\_\_\_

Please include any other information you think would be helpful to us in considering you for employment such as additional work experience, articles/books published, activities, accomplishments, etc. (You may exclude all information indicative of age, sex, race, religion, color, national origin, and handicap.)

AGREEMENT (Please read the following statements carefully)

I hereby affirm that the information provided on this application (and accompanying resume, if any) is true and complete to the best of my knowledge and agree that falsified information or significant omissions may disqualify me from further consideration for employment and may be considered justification for dismissal if discovered at a later date.

I authorize persons, schools, current employer (if applicable) and previous employers and organizations named in this application (and accompanying resume, if any) to provide Co. with any relevant information that may be required to arrive at an employment decision.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

APPROACHES TO AFFIRMATIVE ACTION:  
RECRUITMENT AND SELECTION

## EEOC Guide to Pre-Employment Inquiries

*Following is the text of EEOC's Guide to Pre-Employment Inquiries, as revised in August, 1981. Subscribers should use the guide in conjunction with similar guides issued by individual states and with the text of federal laws as most recently amended.*

### Pre-Employment Inquiries

Employment application forms and pre-employment interviews have traditionally been instruments for eliminating, at an early stage, "unsuited" or "unqualified" persons from consideration for employment and often have been used in such a way as to restrict or deny employment opportunities for women and members of minority groups.

The law, interpreted through court rulings and EEOC decisions, prohibits the use of all pre-employment inquiries and qualifying factors which disproportionately screen out members of minority groups or members of one sex and are not valid predictors of successful job performance or cannot be justified by "business necessity."<sup>1</sup>

In devising or reviewing application forms or in seeking information from job applicants, employers should ask themselves: (1) Will the answers to this question, if used in making a selection, have a disparate effect in screening out minorities and/or members of one sex (i.e. disqualify a significantly larger percentage of members of a particular group than others)? (2) Is this information really needed to judge an applicant's competence or qualification for the job in question?

<sup>1</sup> *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

<sup>2</sup> *Griggs v. Duke Power Co.*, supra, *Robinson v. Lovell Corp.*, 444 F.2d 791 (C.A. 4, 1971); *U.S. v. St. Louis-San Francisco R.R. Co.*, 464 F.2d 301, 308 (C.A. 8, 1971).

<sup>3</sup> *Jones v. Lee Way Motor Freight, Inc.*, 431 F.2d 245 (1970).

### Business Necessity and Job Relatedness

The concept of business necessity has been narrowly defined by the courts. When a practice is found to have discriminatory effects, it can be justified only by showing that it is necessary to the safe and efficient operation of the business, that it effectively carries out the purpose it is supposed to serve and that there are no alternative policies or practices which would better or equally well serve the same purpose with less discriminatory impact.<sup>2</sup>

An employer should be able to demonstrate through statistical evidence that any selection procedure, which has a "disparate effect" on groups protected by the law, is job related, (i.e. validly predicts successful performance in the type of job in question.) If this cannot be shown or if the employer cannot or does not wish to perform a technical validation study, the use of that procedure should be discontinued or altered in such a way that there is no longer a discriminatory effect.<sup>3</sup> Even when a procedure having an adverse impact can be validated, it may not be used if there are other procedures which would accomplish the same goal and have less of a discriminatory effect.

### Specific Issues Addressed by Court and EEOC Decisions Race, Color, Religion Sex or National Origin

Under Title VII, pre-employment inquiries concerning race, color, religion, sex or national origin are not considered violations of the law in and of themselves. However, inquiries which either directly or indirectly disclose such infor-

<sup>3</sup> EEOC Guidelines on Employee Selection Procedures, Code of Federal Regulations, Title 29, Chapter XIV, Part 1607.

mation, unless otherwise explained, may constitute evidence of discrimination prohibited by Title VII.

Some state fair employment practice laws expressly prohibit inquiries on employment applications concerning the applicant's race, color, religion, sex or national origin. In some states it may also be considered illegal to seek related data (e.g. former name, past residence, names of relatives, place of birth, citizenship, education, organizational activities, photograph, and color of eyes and hair) which could indirectly reveal similar information.

Denial of equal opportunity to individuals because of marriage to or association with persons of a specific national, ethnic or racial origin, or because of attendance at schools or churches, or membership in organizations identified with particular racial or ethnic groups, may be considered a violation of Title VII.<sup>4</sup> Charges presented to EEOC alleging such discrimination will be examined with particular concern to determine if, indeed, the alleged discrimination was based on national origin. These determinations will be made according to general Title VII principles, such as disparate treatment and adverse impact.

An employer may justifiably and legitimately seek and obtain information needed for implementation of affirmative action programs, court-ordered or other government reporting or record-keeping requirements, and for studies to identify and resolve possible problems in the recruitment and testing of members of minority groups and/or women to insure equal employment for all persons.

However, the employer must be able to demonstrate that such data were collected for legitimate business purposes. Such information should be kept

<sup>4</sup> EEOC Guidelines on Discrimination Because of National Origin, Code of Federal Regulations, Title 29, Chapter XIV, Part 1606; EEOC Decision No. 71-969 (1970).

<sup>5</sup> *Davis v. County of Los Angeles*, 655 F.2d 1334 (C.A. 9 1977), vacated and remanded as moot on other grounds,

separate from the regular permanent employee records to insure that it is not used to discriminate in making personnel decisions.

### Height and Weight

EEOC and the courts have ruled minimum height and weight requirements to be illegal if they screen out a disproportionate number of minority group individuals (e.g. Spanish-surnamed or Asian Americans) or women, and the employer cannot show that these standards are essential to the safe performance of the job in question.<sup>5</sup>

### Marital Status, Number of Children and Provision for Child Care

Questions about marital status, pregnancy, future child-bearing plans, and number and age of children are frequently used to discriminate against women and may be a violation of Title VII if used to deny or limit employment opportunities for female applicants. Employers are cautioned against use of such non-job-related questions. Information needed for tax, insurance or Social Security purposes may be obtained after employment.<sup>6</sup>

It is a violation of Title VII for employers to require pre-employment information about child-care arrangements from female applicants only. The U.S. Supreme Court has ruled that an employer may not have different hiring policies for men and women with preschool children.<sup>6</sup>

### English Language Skill

When the use of an English language proficiency test has an adverse effect upon a particular minority group and English language skill is not a require-

440 U.S. 625 (1979); *Dothard v. Rawlinson*, 433 U.S. 321 (1977).

<sup>6</sup> See section on "Data Required for Legitimate Business Purposes."

<sup>7</sup> *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971).

ment of the work to be performed, there is a violation of Title VII.<sup>7</sup>

#### Educational Requirements

The U.S. Supreme Court has found an employer's requirement of a high school education discriminatory where statistics showed such a requirement operated to disqualify blacks at a substantially higher rate than whites and there was no evidence that the requirement was significantly related to successful job performance. This standard applies to all groups protected under Title VII and is relevant to all questions relating to educational attainment, where no direct job related requirement or business necessity can be proven.<sup>8</sup>

#### Friends or Relatives Working for the Employer

Information about friends or relatives working for an employer is not relevant to an applicant's competence. Requesting such information may be unlawful if it indicates a preference for friends or relatives of present employees and the composition of the present workforce is such that this preference would reduce or eliminate opportunities for women or minority group members.<sup>9</sup> However, a "nepotism" policy which prohibits or limits employment opportunity of a spouse or other relative may also be illegal if it has an adverse impact on job opportunities for either women or men as a group.<sup>10</sup>

#### Arrest Records

Because members of some minority groups are arrested substantially more often than whites in proportion to their numbers in the population, making personnel decisions on the basis of arrest records involving no subsequent convictions has a disproportionate effect on the employment opportunities of members of these groups. The courts and the commission accordingly have held that

without proof of business necessity an employer's use of arrest records to disqualify job applicants is unlawful discrimination.<sup>11</sup> EEOC has ruled that even if an employer does not consider arrest information, the mere request for such information tends to discourage minority applicants and is therefore illegal.

#### Conviction Records

Federal courts have held that a conviction for a felony or misdemeanor may not by itself lawfully constitute an absolute bar to employment, but that an employer may give fair consideration to the relationship between a conviction and the applicant's fitness for a particular job.<sup>12</sup> These decisions indicate that conviction records should be cause for rejection only if their number, nature and recentness would cause the applicant to be unsuitable for the position. If such inquiries are made, they should be accompanied by a statement that a conviction record will not necessarily be a bar to employment, and that factors such as age and time of the offense, seriousness and nature of the violation, and rehabilitation will be taken into account.

#### Discharge From Military Service

Employers should not, as a matter of policy, reject applicants with less than honorable discharges from military service. According to a Department of Defense study, minority service members receive a higher proportion of general and undesirable discharges than non-minority members of similar aptitude and education.

Thus, an employer's requirement that to be eligible for employment, ex-members of the armed services must have been honorably discharged has a dispa-

<sup>7</sup> EEOC Guidelines on Discrimination Because of National Origin, *supra*. Uniform Guidelines on Employee Selection Procedures (1978).

<sup>8</sup> *Griggs v. Duke Power Co.*, *supra*.

<sup>9</sup> *Local 53, Int'l. Ass'n. of Heat and Frost Insulators and Asbestos Workers v. Vogler*, 407 F.2d 1047 (C.A. 5, 1969); *Leo v. Cone Mills Corp.*, 438 F.2d 86 (C.A. 4, 1971);

*aff'g* 301 F. Supp. 97 (D.C.N.C., 1969); EEOC Decision No. 74 13 (1973).

<sup>10</sup> EEOC Decision No. 75-239 (1975).

<sup>11</sup> *Carter v. Gallagher*, 452 F.2d 315 (C.A. 8, 1971); *Gregory v. Litton*, 472 F.2d 631 (C.A. 9, 1972).

<sup>12</sup> *Carter v. Gallagher*, *supra*; *Green v. Missouri Pacific R.R. Co.*, 523 F.2d 1290 (C.A. 8, 1975).



rate effect upon minorities and may be a violation of Title VII.<sup>14</sup>

One Federal district court has held that an employer may inquire into an applicant's military service record if information regarding discharge status is used not in making a hiring decision but in deciding whether further investigations should be made into the applicant's background and qualifications. If further inquiry reveals non-discriminatory grounds for denying employment, the employer may then refuse to hire applicant.<sup>14</sup>

Since a request for this information may discourage minority workers from applying and therefore be grounds for a discrimination charge, employers should avoid such questions unless "business necessity" can be shown. As in the case of conviction records discussed above, questions regarding military service should be accompanied by a statement that a dishonorable or general discharge is not an absolute bar to employment and that other factors will affect a final decision to hire or not to hire.

### Age

The Age Discrimination in Employment Act of 1967, as amended, prohibits discrimination on the basis of age with respect to individuals 40 to 70 years of age.

A request that an applicant state his age may tend to deter older applicants or may otherwise indicate discrimination based on age. Consequently, employment application forms which request such information will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the Age Discrimination in Employment Act. Permissible purposes are limited to when the age requirement or limit is a bona fide job qualification (e.g., actors required for

youthful roles) or is based on reasonable factors other than age.

Further information on age discrimination is contained in EEOC pamphlet *Persons 40-70 Note: Age Discrimination is Against the Law*. This pamphlet is available from EEOC at any of its district or area offices or from EEOC's Office of Public Affairs, Washington D.C. 20506.

### Citizenship

EEOC *Guidelines on Discrimination Because of National Origin* indicate that consideration of an applicant's citizenship may constitute evidence of discrimination on the basis of national origin.

The law clearly protects all individuals, both citizens and non-citizens domiciled or residing in the United States, against discrimination on the basis of race, color, religion, sex or national origin.

Where consideration of citizenship has the purpose or effect of discriminating against persons of a particular national origin, a person who is a lawfully immigrated alien, legally eligible to work, may not be discriminated against on the basis of his/her citizenship, except in the interests of national security or determined under a United States statute or presidential executive order respecting the particular position or premises in question.

If states have enacted laws prohibiting the employment of non-citizens that are in conflict with Title VII, the laws are superseded by Section 708 of Title VII.<sup>15</sup>

The U.S. Supreme Court has found that a state civil service law which restricted state employment to U.S. citizens was unconstitutional and a denial of equal protection and benefit of the laws. A flat ban on employment of aliens without regard to the type of position or to the characteristics of the

<sup>14</sup> EEOC Decision No. 74-25 (1973).

<sup>15</sup> *Lewis v. Western Airlines*, 379 F. Supp. 684, (D.C. ND Cal., 1974); Partial summary denied, 10 FEP Cases 531 (D.C. ND Cal., 1975).

<sup>15</sup> EEOC *Guidelines on Discrimination Because of National Origin*, supra.



applicant involved was not justifiable on grounds of public interest.<sup>16</sup>

#### Economic Status

Rejection of applicants because of poor credit ratings has a disparate impact on minority groups and hence has been found unlawful by the Commission, unless business necessity can be shown.

Inquiries as to an applicant's financial status, such as bankruptcy, car ownership, rental or ownership of a house, length of residence at an address, or past garnishment of wages, if utilized to make employment decisions, may likewise violate Title VII.<sup>17</sup>

#### Availability for Work on Weekends or Holidays

Employers and unions have an obligation to accommodate the religious beliefs of employees and/or applicants, unless to do so would cause undue economic hardship. EEOC has determined that the use of pre-employment inquiries that determine an applicant's availability has an exclusionary effect on the employment opportunities of persons following certain religious practices. Questions relating to availability for work on Friday evenings, Saturdays, or holidays, should not be asked unless the employer can show that the questions have not had an exclusionary effect of its employees or applicants who would need an accommodation for their religious practices, that the questions are otherwise justified, and that there are no alternative procedures which would have a lesser exclusionary effect.<sup>18</sup>

#### Data Required for Legitimate Business Purposes

Data on such matters as marital status, number and age of children, and

similar issues, which could be used in a discriminatory manner in making employment decisions but which are necessary for insurance, reporting requirements or other business purposes, can and should be obtained after a person has been employed, not by means of an application form or pre-employment interview.

Another means of collecting such data that has been approved by the courts is use of a "tear-off sheet," preferably anonymous. After completing the application and the tear off sheet, the latter is separated from the application and used only for purposes unrelated to the selection decision.

•••••

It is reasonable to assume that all questions on an application for or in a pre-employment interview are for some purpose and that selection or hiring decisions are made on the basis of the answers given. In an investigation of charges of discrimination, the burden of proof is on the employer to show that answers to all questions on application forms or in oral interviews are not used in making hiring and placement decisions in a discriminatory manner prohibited by the law.

To seek information other than that which is essential to effectively evaluate a person's qualifications for employment is to make oneself vulnerable to charges of discrimination and consequent legal proceedings.

It is therefore in an employer's own self interest to carefully review all procedures used in screening applicants for employment, eliminating or altering any not justified by business necessity.

<sup>16</sup> *Sugarman v. Dougall*, 413 U.S. 634 (1973).

<sup>17</sup> *Johnson v. Pike Co.*, 332 F. Supp. 490 (C.D. Calif., 1971); EEOC Decision No. 74-02 (1973).

<sup>18</sup> EEOC Guidelines on Discrimination Because of Religion, Code of Federal Regulations, Title 29, Chapter XIV, Part 1605.



Exhibit V- F

Interview and Hiring Form

Name of Applicant:	Address & Phone:
Position Applied for:	
How did the applicant find out about the position?	
Minority? Low/Mod Income?	Ethnic Characteristic:
Was the Applicant Selected for an Interview? Yes ( )      No ( )	
If not, reason:	
Date of Interview:	
Others participating in the interview besides the preparer of this report:	
Was the Applicant hired? Yes ( )      No ( )	
If not, reason:	
Name and Title of Person Preparing this Report:	
Date Report Prepared:	



## EXHIBIT V-G

[illegible]

\*Labor Force data available by County from census.



EXHIBIT V-H

CONTRACTOR'S SECTION 3 PLAN AND FORMS

(Name of Contractor) agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the (Section 3 project area).

- A. To ascertain from the grantee's CDBG project official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from the Section 3 project area the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within and servicing the project area such as local Human Resource Development Councils, the Montana Job Service, labor organizations, or other employment-oriented organizations.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this Section 3 plan in all bid documents (for subcontracts greater than \$10,000) and to require all bidders on subcontracts to submit a Section 3 affirmative action plan detailing the specific steps planned to increase the utilization of lower income residents and businesses within the Section 3 project area.
- E. To insure that subcontracts (greater than \$10,000) which are typically let on a negotiated rather than a bid basis in areas other than the Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors, and trade associations to secure their cooperation in this effort.
- G. To insure that all appropriate project area business concerns are notified of pending subcontractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan.

- J. To maintain records concerning the amount and number of contracts, subcontracts, and purchases which contribute to Section 3 objectives.
- K. To maintain records of all projected workforce needs for all phases of the project by occupation, trade, skill level, and number of positions and to update these projections based on the extent to which hiring meets Section 3 objectives.

As officers and representatives of (name of company), We the undersigned have read and fully agree to the Section 3 Affirmative Action Plan, and become a party to the full implementation of the program and its provisions.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



SUGGESTED SECTION 3 PRELIMINARY WORKFORCE STATEMENT

for

UTILIZATION OF LOWER INCOME PROJECT AREA RESIDENTS

AS REGULAR, PERMANENT EMPLOYEES, TRAINEES, APPRENTICES

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

Project \_\_\_\_\_

(Submit prior to signing contract..)

	PRESENT PERMANENT EMPLOYEES (At time of contract signing)	Section 3 WORKFORCE PROJECTION (residents)	TOTAL PROJECTED WORKFORCE INCREASE
Trainees			
Apprentices			
Journey persons			
Laborers			
Supervisory			
Superintendent			
Professional			
Clerical			

NOTE: Residents are those lower income project area residents who have been qualified as eligible..

SECTION 3

SUGGESTED APPLICATIVE ACTION PLAN FOR UTILIZATION

PROJECT AREA BUSINESSES

NUMBER OF ALL CONTRACTS PROPOSED \_\_\_\_\_

DOLLAR VALUE OF ALL CONTRACTS PROPOSED \_\_\_\_\_

Name of Company \_\_\_\_\_

Project \_\_\_\_\_

TO THE GREATEST EXTENT FEASIBLE CONTRACTS WILL BE AWARDED THROUGH NEGOTIATIONS OR BID TO QUALIFIED PROJECT AREA BUSINESSES.

GOAL OF THESE CONTRACTS FOR PROJECT AREA BUSINESSES:

PROPOSED TYPE OF CONTRACT	APPROXIMATE COST	PROPOSED TYPE OF CONTRACT	APPROXIMATE COST

OUTLINE THE PROGRAM TO ACHIEVE THESE GOALS FOR ECONOMICALLY AND SOCIALLY DISADVANTAGED AND OTHER SECTION 3 BUSINESSES

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# Fifteen-Day-Report

## SECTION 3 EMPLOYMENT REPORT

Company Name \_\_\_\_\_  
 Project \_\_\_\_\_  
 Date \_\_\_\_\_

### UTILIZATION OF LOWER INCOME PROJECT AREA RESIDENTS\* AS TRAINEES, APPRENTICES, PERMANENT EMPLOYEES

No. of positions identified in preliminary workforce statement	Total No. of low income residents on payroll during reporting period.	No. of positions vacant on last day of reporting period. Give reason for vacancy.		No. by source of recruitment of residents put on payroll during reporting period.
		Number	Reason	
Trainees				
Apprentices				
Journey persons				
Laborers				
Supervisory				
Superintendent				
Professional				
Clerical				

NOTE: \*Residents are those lower income project area residents who meet requirements and have been qualified as eligible under Section 3.



Form A<sub>1</sub>

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
COMMUNITY PLANNING AND DEVELOPMENT  
CONTRACT AND SUBCONTRACT ACTIVITY

QUARTER REPORTING (Check One)

GRANTEE NAME

CONTACT PERSON

PHONE

GRANT NUMBER

AMOUNT OF CONTRACT	(b)

TYPE OF	BUSINESS
---------	----------

CONTRACTOR  
ID  
NUMBER  
(e)

SUBCONTRACTOR  
ID  
NUMBER  
(f)

NAME \_\_\_\_\_

CONTRACT	
----------	--

STREET	(g)	TRACTOR
--------	-----	---------

(a)  
CONTRACTOR/SUBCONTRACTOR NAME AND ADDRESS

57

CITY

STAFF

[illegible]

NAME \_\_\_\_\_

NUMBER  
(1)

MBER  
(e)

(d)

(b)  
CONTRACT

(a)  
T NUMBER

1. Construction	1. White
2. Education/Training	2. Black
3. Other	3. American Indian/Alaskan Native
	4. Hispanic/Latino
	5. Asian/Pacific Islander

is:ender

HUD-2518 (9-12)

1

- REF ID: A66061

Listing of acceptable actions to promote fair housing

Provision of housing counseling services which assist minorities and women seeking housing outside areas of concentration.

For very small communities only- - publicize that the city government will assist persons experiencing discrimination in housing. Such assistance can be in the form of facilitating the filing of a complaint with HUD.

Work with local real estate brokers to formulate a Voluntary Areawide Marketing Agreement.

Work with local banks to end redlining practices and to post "equal lending opportunity" advertisements.

Use "equal housing opportunity" slogan and logo  on city letterhead.

Sponsor fair housing seminars and campaigns.

Work with minority and women leaders in the area to promote housing development and increase minority and female participation.

Assist local housing developer in developing outreach programs to attract minorities and females.

Review zoning ordinances and comprehensive plans to insure they promote special deconcentration of assisted housing units.

Make city-owned property located outside areas of concentration available to developers at no or nominal cost for the construction of assisted units particularly for large family units.

Develop an Areawide Housing Opportunity Plan.

Create a local housing authority.

Conduct special studies to insure minority and female housing needs are adequately identified.

Adopt a code enforcement ordinance which will compel landlords to keep their units in safe and sanitary condition.





# **Chapter VI**

## **Labor Standards**



## CHAPTER VI

### LABOR STANDARDS

#### OVERVIEW

This chapter provides an overview of federal and State laws which govern the wages and working conditions for laborers and mechanics employed under construction contracts funded in whole or in part by State CDBG funds.

Solicitation of bids and the awarding of contracts for construction, alteration or rehabilitation of public works, projects, public facilities and some housing projects are governed by a set of laws designed to ensure that:

- all contractors pay mechanics and laborers at a rate equal to that paid to those workers on similar activities in the locality. This is known as the "prevailing wage rate;"
- workers be paid at regularly scheduled intervals (at least once a week) and only those deductions allowable by law or as authorized by the employee shall be taken out of the worker's gross pay;
- all workers receive "overtime" compensation at a rate of one and a half (1.5) times their regularly hourly wage for worked performed in excess of eight (8) hours per day or forty (40) hours per week; and
- all workers are assured of safe and healthy working conditions.

#### APPLICABLE LAWS

The following four acts provide the legislative authority for the requirements related to workers' wages and hours on projects receiving federal assistance. In addition to compliance with labor standards,

grantees must comply with applicable civil rights requirements as explained in Chapter V. It is suggested that grantees review Chapter V prior to soliciting any bids for contracts as described later in Chapter VI.

The Requirements Notebook contains a copy of:

- the Copeland Anti-Kickback Act;
- Contract Work Hours and Safety Standards Act; and
- HUD Handbook 1344.1 - Federal Labor Standards Compliance in Housing and Community Development Programs. Exhibit 1 to the Handbook contains Title 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).

A copy of the Davis-Bacon Act is available upon request to the CDBG liaison.

#### -- DAVIS-BACON AND RELATED ACTS

Objective -- to ensure that mechanics and laborers employed in construction work under federal contracts and contracts of recipients of federal financial assistance are paid wage rates and fringe benefits equal to those of corresponding classes of workers on similar construction in the locality in which the work is performed.

Key Provisions -- applicable to all contracts or subcontracts, which exceed \$2,000 for construction, alteration, or rehabilitation. Rate determinations are provided by the Office of the Wage and Hour Division, Employment Standards Administration, Department of Labor. Classifications of workers excluded from prevailing wage rates include apprentices registered in a bona fide apprenticeship program, trainees employed under a program approved by the U.S. Department of Labor, or

helpers if the helper classification is specified on the request to the Department of Labor for a wage rate determination. Housing rehabilitation of less than eight units or where less than eight units were bid as a single contract is excluded from Davis-Bacon provisions.

-- SPECIAL CONDITIONS - LABOR (TITLE 18, CHAPTER 2, PART 4 - MCA)

Objective -- same as Davis-Bacon federal legislation for all contracts let by the State, counties and municipalities.

Key Provisions -- superceded in those instances where federal law is applicable (Section 18-2-402(2) MCA). No minimum contract provision; therefore, State law applies to contracts less than \$2,000. Prevailing wage rate shall not exceed the applicable wage rate in the locality as negotiated under existing or current collective bargaining agreements.

-- COPELAND "ANTI-KICKBACK" ACT

Objective -- to prohibit wage "kickbacks" and salary deductions other than those prescribed by law (e.g. tax withholding and FICA) or those voluntarily authorized by the wage earner.

Key Provisions -- applicable to any federally assisted contract subject to Davis-Bacon wage standards.

-- CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, AS AMENDED

Objective -- to ensure that workers on federally assisted construction projects are compensated for overtime and to ensure that safe and healthy working conditions are provided.

Key Provisions -- applies to all construction contracts over \$2,000. Financial assistance which is in the form of a loan guarantee or loan insurance is exempt from this requirement.

## LOCAL GRANTEE RESPONSIBILITIES

CDBG funded construction projects require that the grantee take the following actions to ensure that all requirements related to labor standards are satisfied. As noted earlier, applicable civil rights requirements must also be complied with.

### Step 1 -- Request Wage Rate Determination

A request for wage determination should be submitted to the CDBG liaison in the Department of Commerce as soon as the grantee knows the project will go to bid. The request consists of a letter to the DOC for a wage determination (see Exhibit VI-A).

Wage determinations are published periodically in the Federal Register. Different types of determinations apply, depending upon the type of project. There are different determinations for "heavy-highway" construction projects, projects where buildings are involved, and for various types of housing rehabilitation projects. DOC maintains a file of current determinations and verifies them by County with the U.S. Department of Labor before sending a copy to the grantee in response to its request.

Ten days prior to the bid opening the grantee must contact the CDBG liaison by telephone or in writing, to determine whether the wage rate decisions included in the bid solicitation are still current. DOC will respond in writing. In those instances where changes have occurred, the grantee should provide the new rate decision to all potential bidders.

### Step 2 -- Include Wage Rate In Solicitation of Bids

The wage rate determinations as provided by the State CDBG staff must be included in any solicitation for bids. (A sample bid package is provided in Chapter VIII, Public Facilities Projects).

Step 3 -- Include Labor Standards Provisions  
and Certifications in Solicitation of Bids and Contract Document

The governing regulations for the applicable laws related to labor standards provide for specific language to be included in all solicitations for bids and contracts for projects receiving federal financial assistance. Additionally, each bidder and eventual contractor are required to provide specific certifications assuring the grantee that the bidder and/or contractor will comply with prescribed labor standards requirements. (Specific bid and contract language and certifications are provided in the sample bid package and construction contracts which appear as exhibits in Chapter VIII.)

Bidders must also comply with civil rights requirements as described in Chapter V. As with labor standards, prescribed language for bid documents and contracts is included in exhibits in Chapter VIII. Several key requirements bidders must comply with include:

- specific plans to utilize local businesses (Exhibit V-H provides a sample Section 3 plan and related forms);
- non-discrimination;
- hiring local low and moderate income persons; and
- utilizing minority businesses.

The grantee is then required to maintain data on awards to local or minority business contractors (Exhibit V-I provides sample reporting forms).

Step 4 -- Verify Bidder Eligibility

The U.S. Department of Labor and HUD both maintain lists of contractors who have been found in violation of the labor standards requirements and therefore have been debarred, suspended, or otherwise declared ineligible for participation in federally assisted construction projects. As soon as possible following the bid opening, but before awarding any construction contract, the grantee must

provide notice to the State CDBG liaison of a pending contract. (See sample letter, Exhibit VI-B.) The CDBG staff will then check both HUD's "Consolidated List of Debarred, Suspended, and Ineligible Contractors" and the Comptroller General's "Consolidated List of Debarred and Suspended Contractors."

If the selected bidder is determined to be eligible the DOC will provide the grantee with a notice of eligibility. If the selected bidder appears on either list of ineligible contractors, the DOC will provide a notice of ineligibility. At that point the grantee may offer the contract to the first alternate bidder or may reopen the bidding procedures.

Step 5 -- Include Instructions Related to Labor  
Standards in Pre-Construction Conference

Following the contract award the grantee should hold a preconstruction conference. (A detailed description of the conference and labor standards, civil rights requirements, and other topics to be covered is provided in Chapter VIII, Public Facilities Projects.) At the conference, the grantee should give explicit instructions to the contractor pertaining to notices that must be provided at the construction site and wage reporting requirements.

Notices to be posted at the construction site include:

- Notice to Employees (WH1321 - Available in packages of 20 from the DOL Regional Employment Standards Administration. A sample notice is included as an exhibit in the HUD Handbook.);
- safety and health protection on the job; and
- wage rate decision.



Contractor reporting requirements include:

- General and Subcontractor Weekly Payrolls (a payment form is included as an exhibit in the HUD Handbook);
- Statement of Compliance (included as an exhibit in the HUD Handbook); and
- Notice of Approved Apprenticeship or Trainee Programs, if applicable.

#### Step 6 -- Monitor Contractor Performance

It is the grantee's responsibility to monitor construction contracts to ensure that all required notices are posted prominently at the construction site, that the contractor's weekly wage reports are accurate, and that the contractor is complying with applicable labor standards. This monitoring function can be accomplished through the following activities:

- on-site inspections to ensure that required notices are posted;
- comparison of weekly payroll reports to the prevailing wage rate decision; and
- interviews with construction employees. Interviews should be conducted at least once a month with a representative of each classification of laborers and at least 10 percent of the workforce. The format for construction employee interviews is provided as an exhibit in the HUD Handbook.

#### Step 7 -- Investigate Labor Standards Violations

Violations of labor standards requirements may surface as the result of either monitoring by the grantee or through a specific complaint by a construction worker. In either instance, the grantee is responsible for investigating and documenting the alleged violation.

If a violation is evident, the grantee should work with the contractor on an informal basis to resolve the finding and allow a reasonable time for correction. Where the contractor refuses to address the violation or continues to violate the labor standards provision, the grantee should promptly report the violation to the CDBG liaison. The DOC then will work with the U.S. Department of Labor to determine what actions are required. The contractor should be informed that an unresolved finding could result in disbarment and make the contractor ineligible for further state or federally assisted construction projects.

#### Step 8 -- Maintain Labor Standards Files

For each construction contract, the grantee should maintain a labor standards file which includes the following items:

- copy of Wage Rate Determination Request;
- copy of Wage Rate Decision;
- evidence that labor standards provisions are included in bid packages and contracts;
- letter of request for contractor eligibility;
- DOC notice of contractor eligibility;
- copy of pre-construction conference instructions;
- evidence that required notices have been posted at the construction site;
- contractor's Weekly Payroll (identified as initial, second, etc., final);
- Statement of Compliance;
- construction worker interviews;
- evidence of any violations with supporting documentation;  
and
- evidence of violation resolution.

## CHAPTER VI

### EXHIBITS

VI-A - Request for Wage Determination

VI-B - Request for Verification of Bidder Eligibility



EXHIBIT VI-A

REQUEST FOR WAGE DETERMINATION

(Type on letterhead of grantee)

(Date)

Department of Commerce  
Community Development Division  
Cogswell Building, Room C-211  
Capitol Station  
Helena, Montana 59620

The (name of grantee: City, Town or County of \_\_\_\_\_) is preparing to go to bid for a contract involving 1983 Montana Community Development Block Grant (CDBG) funds. The project involves:

- (brief description of activities);
- (estimate amount); and
- (projected date of bid opening).

Please send a copy of the current wage rate determination which will apply to this project.

Ten days prior to the bid opening I will contact you to confirm that the wage rate determination you have sent in response to this request is still current.

Sincerely,

(signature)

Typed Name  
CDBG Project Administrator  
Mailing Address  
Telephone Number



EXHIBIT VI-B

REQUEST FOR VERIFICATION OF BIDDER ELIGIBILITY

(Type on letterhead of grantee)

(Date)

Department of Commerce  
Community Development Division  
Cogswell Building, Room C-211  
Capitol Station  
Helena, Montana 59620

The (name of grantee: City, Town or County of \_\_\_\_\_) opened bids for the construction on the (name of project) on (date of bid opening) and would like clearance on the (lowest bidder OR two lowest bidders). Please check the current "Consolidated List of Debarred, Suspended, and Ineligible Contractors" to verify eligibility of the following contractor(s):

(provide name(s) and address(es) of contractor(s))

Sincerely,

(signature)

Typed Name

CDBG Project Administrator

Mailing Address

Telephone Number





# **Chapter VII**

## **Acquisition Relocation**



## CHAPTER VII

### ACQUISITION/RELOCATION

#### OVERVIEW

The acquisition of real property and/or the relocation of residents and tenants has the potential for being a demanding experience and one where the local CDBG grantee is most vulnerable to litigation by impacted individuals. In addition, acquisition and relocation are time-consuming activities and therefore are likely to require the hiring of a specialist to provide assistance to displaced persons.

For these reasons it is imperative that the grantee, prior to proceeding with any acquisition or relocation activities, have in place a standard set of procedures which assures that the acquisition-relocation process will be fair and equitable to all involved parties. In particular, the locally developed procedures should ensure that all impacted individuals are provided with as much information as possible concerning the acquisition/relocation, that they are offered advice and counseling to the greatest extent possible, and that the local procedures include means by which the locality will address grievances by impacted individuals.

When designing the system the grantee should consider the following principles:

- every effort should be made to reach solutions in acquisition/relocation situations that are mutually agreeable to all involved parties;
- whenever possible, litigation should be avoided and used only as a last resort; and
- the procedures should expedite the acquisition or relocation process to minimize the disruptive effects on the displaced individuals and/or businesses.

## APPLICABLE LAWS

### -- UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

Objective -- to ensure the uniform and equitable treatment of persons and businesses displaced as a result of federal or federally assisted projects and to provide uniform procedures for the acquisition of real property for federal or federally assisted projects.

Key Provisions -- property owners are to be paid at least the appraised fair market value for acquired real property and improvements. Homeowners are eligible for additional assistance to compensate for moving expenses and the differential for purchasing "comparable, decent, safe, and sanitary" housing. Displaced tenants are eligible for reasonable moving expenses and supplemental assistance to cover either the differential in rent for the new housing unit or for downpayment if the displaced persons chooses to purchase a residence. Owners of businesses and farm operations are eligible for reasonable moving costs and reimbursement for any direct losses (tangible or intangible) that result from the acquisition or relocation.

A copy of this Act is included in the Requirements Notebook along with the regulations at 24 CFR Part 42.

### -- RELOCATION ASSISTANCE/FAIR TREATMENT OF CONDEMNEDS (Title 70, Chapter 31, MCA)

Complements requirements provided for in the federal legislation.

### ACQUISITION: LOCAL GRANTEE RESPONSIBILITIES

For CDBG projects which require acquisition of property, the local CDBG office must perform the following tasks.

Step 1 -- Obtain a Copy of HUD Handbook 1376.17 -  
Relocation and Real Property Acquisition

Grantees which have activities involving acquisition must obtain a copy of the Relocation and Real Property Acquisition Handbook from the CDBG liaison before proceeding with the acquisition activities. The Handbook contains forms which must be used and provides guidance in addition to this chapter.

Step 2 -- Determine Whether Each Acquisition is Governed  
By Title III of the Uniform Act

The Uniform Act does not apply to all real property acquisition. Exceptions to the Uniform Act include instances where the property is acquired through a voluntary proposal, submitted by the owner in response to a public invitation, or the real property is already in the possession of a state or federal agency. In either case, however, persons displaced by the acquisition are still entitled to relocation assistance under Title II of the Act.

If the procedures under the Uniform Act are not applicable, the grantee must prepare a notice of exemption to be included in the project file. The notice will include only a description of the parcel to be acquired and the criteria by which the locality determined that the Uniform Act does not apply. (See Exhibit VII-A for a sample notice.)

Step 3 -- Notify Property Owner of Intent to Acquire

This notice must be delivered in person or sent by registered mail to the property owner. The notice should include information about the activity for which the property will be used, indicate that the notice is not a notice to vacate the property, and describe the procedures by which the grantee will proceed with its attempt to acquire the property. The grantee's CDBG office should also provide the owner with a copy of HUD's information booklet "When a Public Agency Acquires Your Property" or its equivalent. The booklet is included in the Requirements Notebook.

Finally, the notice should provide a local contact who can answer questions and provide further information. (See Exhibit VII-B for a sample initial notice to property owner.)

#### Step 4: Have Property Appraised to Determine Fair Market Value

The Uniform Act requires that the public agency must compensate the owner at no less than the fair market value. Although only one appraisal is required by law, past experience suggests that two appraisals are preferred, especially in instances where the property is valued at greater than \$25,000. Regardless of the number of appraisals, the property owner or his or her representative must be invited to accompany the appraiser(s).

Contracting for appraisal services must be done in accordance with guidelines in the HUD Handbook. The prescribed contract for appraisal services is presented as Exhibit 1B-2 in the Handbook.

#### Step 5 -- Determine Just Compensation for the Property

Based on the appraisal(s), the local CDBG office will establish it considers to be a fair price for the property.

#### Step 6 -- Make Written Offer to Owner

As soon as possible following the initial notice of intent to acquire the property, the CDBG office should submit a written offer to the property owner. (See Exhibit VII-C for a sample written offer.) The offer should include:

- the amount of compensation established by the CDBG office;
- an invitation to meet with the owner to discuss the offer;
- an explanation of any incidental costs related to the transfer of the property for which the owner will be reimbursed by the public agency; and
- a willingness to review any materials provided by the owner which might result in a modification of the initial offer.

Step 7 -- Review Any Additional Materials Related to  
Determination of the Purchase Price

Based on discussions with the owner and material that has been supplied by the owner, the grantee may determine that the original appraisals require updating or may request new appraisals. If subsequent updating or new appraisals justify a higher rate of compensation, the grantee should immediately establish a new offer price and submit the new offer in writing as described in Step 6.

Step 8a -- Make Payment, or

In those cases where the CDBG office and the property owner arrive at a mutually agreed upon purchase price, the grantee must make direct payment to the owner before requiring the owner to surrender possession of the property. (Note: The grantee is prohibited by Title III of the Uniform Act from taking any actions that might coerce the property owner into agreeing to the agency's final offer. For example, the public agency could not threaten to move up condemnation proceedings, an action which might put undue hardship on the property owner.) Following payment the local agency can take possession of the land and proceed with the CDBG project.

Step 8b -- Make Final Offer Before Initiating  
Condemnation Procedures

If the CDBG office and the property owner cannot reach agreement on a purchase price, a notice of final offer should be given to the owner. As with other notices, the agency should hand deliver the final offer or send it by registered mail. The notice should contain the final offer, an invitation to discuss again the basis of the final offer, and an anticipated date on which the local CDBG office intends to begin condemnation procedures. The notice should be received by the owner at least seven days before the date provided for the commencement of condemnation. (See Exhibit VII-D for a sample final notice.)

### Step 9 -- Initiate Condemnation Proceedings

On the date provided in the notice of final offer, the locality can begin condemnation proceedings in accordance with State laws governing the excise of the power or eminent domain by counties and municipalities, as provided for in Section 70-30-101, MCA - Eminent Domain.

### Step 10 -- Maintain Acquisition File for Each Property

In addition to the above procedural steps, the local CDBG office is responsible for maintaining files and documentation on each property acquired. The file should include at the least the following items:

- description of property and reasons for acquisition;
- Notice of Intent of Acquire;
- appraiser contracts;
- invitation to owner to accompany appraisers;
- copy of the appraisal;
- Offer of Just Compensation;
- records of any negotiations with owner;
- copy of any materials supplied by owner to determine just compensation;
- final offer;
- Notice of Initiation of Condemnation (if applicable);
- evidence of payment;
- copy of the deed and settlement costs;
- copy of agreements for compensation of related improvements;  
and
- justification of excess payment (if applicable).

### Other Acquisition Considerations

#### Uneconomic Remnant

If the local CDBG office acquires only a portion of the owner's parcel and the remaining portion(s) have little or no utility or



economic value, the agency must offer to acquire the "uneconomic remnant" as part of the total acquisition offer.

#### Tenant Owned Improvements

The grantee must offer just compensation for any improvements on acquired property. Just compensation can be determined as the amount that the improvement adds to the total value of the real property, the depreciated replacement cost of the improvement, or the salvage value of the improvement.

#### Owner Retention of Improvements

If the property owner chooses to remove any improvements which have been included in the fair market appraisal of the property, the grantee may subtract the salvage value of the removed improvements from the purchase offer. For example, if a property value includes a utility shed that the owner removes from the property upon public acquisition, the offer to the owner may be decreased to the appraised property value less the salvage value of the shed.

#### Payments in Excess of Just Compensation

If the public agency offers substantially more to the owner than the appraisal value, a justification should be provided in the acquisition file. If the justification appears unreasonable, the Department of Commerce may determine the excess payment to be an ineligible cost under the CDBG program. The purpose of this provision is to discourage windfall profits from the sale of properties for use in publicly assisted projects.

#### Rental Payments

If the CDBG office agrees to allow the owner to remain on the property for a period of time following payment for acquisition, it can charge the owner up to the fair market rent for the period during which the owner remains on the property.

## RELOCATION: LOCAL GRANTEE RESPONSIBILITIES

For CDBG projects which require relocation of owner-occupied households, tenant-occupied households, and/or businesses, the local CDBG office must perform the following tasks.

### Step 1 -- Obtain a Copy of:

- HUD Handbook 1376.17 - Relocation and Real Property Acquisition
- HUD Publication CPD 674 - Looking Beyond the Walls: A Guide to Relocation

Grantees which have activities involving relocation must obtain a copy of these two publications from the CDBG liaison before proceeding with the allocation activities. The Handbook contains forms which must be used and provides guidance in addition to this chapter. "Beyond the Walls" also provides additional guidance and contains completed examples of the forms which must be filled out.

### Step 2 -- Determine Relocation Workload and Costs

The approximate number of relocation cases should have been included in the grantee's CDBG application accompanied by an estimate line item in the project budget. If necessary, these figures should have been refined during negotiation and execution of the grantee's contract with DOC, before proceeding with any relocation activity.

### Step 3 -- Design Relocation Procedures

Prior to commencing any relocation activities, the grantee should prepare written relocation policies and procedures to provide to relocatees. The following steps must be included in the local procedures as well as any applicable local requirements. Additionally, the local policies and procedures should include a grievance and appeals process.

#### Step 4 -- Determine Eligibility of Relocatee for Benefits

Persons relocated as a result of CDBG project activities are eligible for two types of relocation assistance: moving expenses and replacement housing payments. Replacement housing payments may be in the form of rent differential or downpayments for relocatees who were tenant occupants, or may be the cost differential or interest differential if the displaced household was owner-occupied.

Moving expenses must be paid to all relocatees. Tenants or persons who have owned their home for 90 to 179 days prior to notice of relocation are eligible for: rental assistance equal to 48 times the monthly differential between the rent in the new unit and the unit from which the household was relocated, or assistance to cover the downpayment for the new unit and other incidental expenses such as closing costs. The downpayment assistance can provide the first \$2,000 of the relocatee's downpayment or incidental expenses and up to an additional \$2,000 on a dollar-for-dollar matching basis.

#### Step 5 -- Provide Relocatee with Notice of Displacement or Notice of Right to Continue Occupancy

Within 30 days of the start of negotiations to acquire a property, the relocation specialist must provide each person to be relocated with either a Notice of Displacement or a Notice of Right to Continue Occupancy. In either instance the Notice should be hand delivered with evidence of receipt or sent by certified mail with receipt requested.

The HUD Handbook includes separate exhibits for Notices of Displacement to 180-Day Homeowners, Residential Tenants, and Business. The Notices are included as Handbook Exhibits IC-2, IC-3, and IC-4, respectively.

The Notice of Displacement should:

- identify the CDBG project and inform the displaced person of his or her eligibility for relocation assistance;
- generally describe the level of assistance payments for which the dislocated person is eligible;
- offer non-financial assistance such as counseling or housing referrals;
- be accompanied by a copy of the local CDBG office's relocation policies and procedures and/or a copy of the appropriate HUD brochure dealing with relocation rights. These brochures are included in the Requirements Notebook:

- Relocation Assistance to Displaced Homeowners
- Relocation Assistance to Displaced Tenants
- Relocation Assistance to Displaced Businesses, Farm Operations and Nonprofit Organizations; and

- provide the name of a contact person in the local CDBG office who can provide further information or answer questions.

The Notice of Right to Continue Occupancy is provided only to residential tenant-occupants when the proposed CDBG activity would not require permanent displacement. The HUD Handbook includes a copy of this Notice as Exhibit 2C-5. This Notice must:

- identify the project;
- inform the occupant that any voluntary move may remove any obligation by the local CDBG agency to provide relocation assistance;
- explicitly state the occupant's rights upon continued occupancy; and
- provide the name of a contact person in the local CDBG office who can provide further information or answer questions.

#### Step 6 -- Interview Displaced Person to Determine Housing Needs

Immediately following issuance of the Notice of Displacement, the local relocation specialist should schedule an interview with the head of each displaced household. The interview should be conducted at the dislocated person's residence to determine present housing needs (e.g. number of rooms, bathrooms, air conditioning). At the same time the relocation officer should obtain information about the family size, ethnic composition, gross income, source of income, monthly housing expenses, and other financial liabilities. The information on the previous residence and the occupants is important because Title III requires that the replacement housing be both "comparable and affordable." (A sample family survey is provided as Exhibit VII-E.)

#### Step 7 -- Prepare Site Occupant Record Card for Displaced Person

Based on the information from the family interview, inspection of the residence, and other materials that may be provided by the displaced person, the relocation specialist must prepare a Site Occupant Record Card. Exhibits 7 and 8 of "Beyond the Walls" provide Report Cards for both residential and non-residential occupants respectively. In addition to information about housing and family needs, the record card provides a means of tracking housing referrals and eventual relocations.

If the agency is handling more than one relocation, summary information from each record card should be recorded on a "Relocation Management Control Report." Exhibits 2 and 3 of "Beyond the Walls" provide Control Report forms for both residential and non-residential cases, respectively.

#### Step 8 -- Assist Displaced Person to Identify Replacement Housing and Provide Other Services as Needed

These services should include providing the displaced person with information about housing availability, housing prices, and rental

costs for comparable replacement housing. Additionally, the local relocation officer should be able to identify any other local, state or federal housing assistance programs for which the displaced person might be applicable.

Special attention should be provided to low-income and minority groups to ensure that they receive the protections required under Title VI and Title VIII of the Civil Rights Act and Executive Order 11063. (See Chapter V, Civil Rights.) The local relocation agency cannot require a low-income or minority to vacate his or her present residence unless he or she has been given opportunities to relocate in comparable housing that is not located in an area of low-income and/or minority concentration, if such opportunities are available.

#### Step 9 -- Issue Ninety-Day and Thirty-Day Notices to Vacate

Unless the local CDBG office identifies an urgent need for the occupant to vacate the property, it should issue a Ninety-Day Notice to the occupant identifying the specific date on which the property must be vacated. As with all notices, it must be hand delivered with evidence of receipt or be sent by registered mail. The 90 day period must begin no sooner than the date the occupant acknowledged receipt of the initial Notice of Displacement. The Notice to Vacate cannot be issued until a reasonable selection of replacement dwellings has been identified. (A sample Ninety-Day Notice is provided as Exhibit VII-F.) The Notice must also inform the occupant that he or she will receive another notice 30 days before the specific date indicated as the time by which the occupant must vacate. (A sample Thirty-Day Notice to Vacate is included in Exhibit VII-G.)

#### Step 10 -- Approve Identified Replacement Dwelling

Once the displaced person identified a suitable replacement dwelling, the local relocation officer must inspect the property to assure that it meets the criteria of "safe, sanitary, and decent."

Exhibit VII-H provides a suggested format for the inspection of the replacement unit.

If the selected replacement dwelling provides to be substandard, the relocation specialist must send the relocatee a notice (Exhibit VII-I) to that effect explaining that the individual cannot receive relocation payments while living in substandard housing. The notice should contain an offer of assistance to identify suitable replacement housing.

#### Step 11 -- Determine Relocation Payment

Based on the eligibility criteria described above and the maximum amount of assistance, the local relocation officer should determine the amount of the relocation assistance provided for both moving expenses and relocation costs.

#### Moving Expenses

First, it must be determined whether the moving expenses will exceed the minimum fixed amount of up to \$500 (up to \$300 for moving expenses and a dislocation payment of \$200).

Exhibits 10 and 11 in "Beyond the Walls" provide two alternate completed examples samples of the required form provided as Exhibit ID-1 of the HUD Handbook that should be used for determining the claim for moving expenses for families and individuals. Exhibit 10 of "Beyond the Walls" demonstrates an instance where actual moving costs exceeded the minimum payment, while Exhibit 11 provides an example where the fixed payment provided to be greater. The amount of the fixed payment for moving expenses (up to \$300) is based on the Federal Highway Administration Schedule for Fixed Moving Expenses which is available from:



U.S. Department of Housing and Urban Development  
Office of Regional Community Planning and Development  
Program Support Division, Acquisition/Relocation  
Denver Regional/Area Office, Region VIII  
1405 Curtis Street, Executive Tower Building  
Denver, Colorado 80202.

Exhibits 12 and 13 in "Beyond the Walls" provide completed examples of the required forms provided as Exhibits ID-2 and IE-1 of the HUD Handbook. These are the forms to use in determining the claim for actual and fixed, respectively, moving costs for businesses, nonprofit organizations, and farm operations.

#### Replacement Housing Payment

Second, the replacement housing payment is determined according to whether the displaced person qualified as a 180-day homeowner, or tenant.

A person who has owned and occupied an acquired property at least 280 days before the local CDBG agency began negotiations to purchase the property is eligible for:

- the amount, if any, by which the cost of the replacement unit exceeds the price paid by the CDBG agency to acquire the owner's property;
- the amount, if any, for increased mortgage costs as the result of interest rate or debt service differentials; and
- any incidental expenses associated with purchase of the replacement unit such as closing costs.

Exhibit 14 in "Beyond the Walls" provides a completed example of the required form for a replacement housing payment for a 180-day homeowner. A copy of the form is included as Exhibit IF-1 in the HUD Handbook. As stated previously, this payment may not exceed \$15,000.



For tenant-occupants or owner-occupants who have occupied the acquired property for 90 days prior to the initiation of negotiations by the local CDBG grantee to acquire the property, the housing assistance payment is provided as rental assistance or as assistance in making a downpayment to purchase a replacement dwelling. In either case, the total assistance cannot exceed \$4,000.

In the case of rental assistance payments, the relocation specialist and tenants determine the monthly differential for rent and utilities. If the rental cost of the replacement unit exceeds that of the acquired dwelling, the replacement assistance payment is equal to 48 times the monthly differential. Exhibit 15 in "Beyond the Walls" provides a completed example of the required form provided as Exhibit IG-1 of the HUD Handbook that should be used for determination of rental assistance payments.

Where the displaced person chooses to purchase replacement housing, the payment is based on the required downpayment and other incidental costs associated with the purchase of the replacement dwelling. Exhibit 16 in "Beyond the Walls" provides a completed example of the required form sample for determination of downpayment assistance payments. A copy of the form is included as Exhibit IG-2 in the HUD Handbook.

#### Step 12 -- Process Moving Expense and Housing Replacement Payments

Regardless of the basis for determination of assistance for which the displaced person is eligible, the local CDBG office should immediately process the relocation assistance payment. The payment must be made directly to the displaced person.

At the time the payment is made, the local CDBG office should have the assisted person submit a statement acknowledging both the receipt of the payment and any services and/or counseling provided by the local relocation office. (A sample Letter of Acknowledgement is provided as Exhibit VII-J.)

### Step 13 -- Follow-Up

Approximately 60 days after the payment has been made and the relocation has taken place, the local relocation officer should contact the relocated individuals to inquire whether the replacement housing is satisfactory.

### Step 14 -- Maintain Records and Documentation of Each Relocation Case

For each household or business relocated, the local CDBG office should maintain a file containing the following data and documentation:

- fully completed Record Form;
- copy of Notice of Displacement or Notice to Continue Occupancy;
- evidence of receipt of Notice by relocatee;
- copy of Household Survey;
- copy of Ninety-Day and Thirty-Day Notices;
- evidence of receipt of Notices by relocatee;
- evidence of replacement referrals;
- record of inspection of selected unit;
- copy of Relocation Claim with documentation;
- evidence of verification of Claim;
- appeals and disposition; and
- any correspondence between the CDBG office and the relocatee.

### Other Relocation Considerations

#### Waiver of Ninety Day Notice

The local CDBG office may require property owners and tenants to vacate prior to the issuance of a Ninety-Day Notice in the cases of emergencies such as natural disasters or in situations where continued occupancy represents a substantial danger to the health or safety of the occupant or the public. Eligibility for relocation assistance

payments is not affected when a person is required to vacate for the above reasons. A copy of any instructions to the property owner with justification for the waiver of the 90-day period should be included in the case file.

#### Multiple Occupants

When a property is occupied by two or more people, regardless of whether they are members of the same family, the relocation assistance must be divided among the parties on a pro-rated basis proportionate with each person's share of the moving and relocation expenses. For additional information, see page IC-13 of the HUD Handbook.

#### Relocation Assistance is Not Taxable Income

Persons required to vacate property should be informed that the relocation assistance payments are not considered to be income for purposes of calculating liability under either the Internal Revenue Code of 1954, the Social Security Act, or the Montana State Tax Code.

#### Last Resort Replacement Housing

If an instance arises where the relocation specialist has been unable to identify comparable and affordable replacement housing, the local CDBG office may take the following extraordinary actions to provide replacement units for displaced persons:

- rehabilitate an existing structure with project funds to bring it up to conditions that would make it affordable and comparable;
- construct new housing with project funds to meet relocation requirements; or
- exceed the maximum payments provided for in the Uniform Act.

In any of the above instances, the relocation specialist must thoroughly document efforts to identify comparable and affordable housing that is decent, safe, and sanitary and describe the process by which a determination was made to take one of the actions described above. A copy of this documentation should be included in the case file.

### Appeals

Displaced persons may appeal any relocation action if he or she feels that:

- determination of eligibility or amount of payment was erroneous;
- the local CDBG office did not provide sufficient relocation services including replacement housing referrals; or
- the grantee failed to comply with any requirement (e.g. notices) of the Uniform Act.

All appeals must initially be made to the local CDBG grantee under the grievance procedures established for the local program. The appeal must be filed within six months of the initial notice of displacement and can be presented either orally or in writing. The grantee's review of the appeal should be based on all applicable rules and regulations, materials supplied by the person making the appeal, and all materials on which the grantee made its original determination. The grantee must make a determination within 30 days of receiving all materials submitted by the person making the appeal.

Within 30 days of the determination the displaced occupant may appeal to the Department of Commerce to review the local determination. Similarly, an appeal can be carried to HUD for federal review. No action taken by the displaced person through the appeal process limits the person's right to seek judicial review of the local grantee's action.

For additional guidance on the appeals process, refer to Appendix 1 of the HUD Handbook.

Waiver of Relocation Assistance Payment

In the unlikely case that an individual declines to accept relocation assistance payment offered by the local agency, evidence of the person's decision should be included in the case file. Exhibit 1A-2 of the HUD Handbook provides the required format for a Letter of Waiver.



## CHAPTER VII

### EXHIBITS

- VII-A - Uniform Real Property Policies Act of 1970/Notice of  
Exemption
- VII-B - Preliminary Acquisition Notice
- VII-C - Written Offer to Purchase
- VII-D - Final Notice to Acquire by Negotiations
- VII-E - Family Survey Guide
- VII-F - Ninety-Day Notice to Vacate
- VII-G - Thirty-Day Notice to Vacate
- VII-H - Inspection Report Format
- VII-I - Letter to Relocatee in a Substandard Unit
- VII-J - Letter of Acknowledgement for Services and Payment Rendered





EXHIBIT VII-A

UNIFORM REAL PROPERTY POLICIES ACT OF 1970  
NOTICE OF EXEMPTION

(Type on letterhead of grantee)

Date

As part of the (name of grantee: City, Town, or County of \_\_\_\_\_)'s FY 1983 project funded by the Montana CDBG program, it will be acquiring a parcel of land (describe general location, boundaries, and proposed activity, for example: adjacent to the city limits as the location of a sewage lagoon. The property is bounded to the west by the city limits, to the northeast by State Highway 193, and to the southeast by County Road 14.) See attached map.

The (name of grantee) CDBG Office selected this site after soliciting for a voluntary offer by landowners in the general project area. As the property was acquired through a voluntary proposal submitted by the owner in response to a public invitation, the CDBG Office has determined that the acquisition is exempt from procedures required under the Uniform Act, Title III.

The (name of grantee) acknowledges that any dislocation of residents on the property must be accomplished according to provisions related to relocation in Title II of the Uniform Act.

Any questions related to the acquisition of this property should be addressed to:

(name \_\_\_\_\_)  
CDBG Administrator

(Mailing Address)

( \_\_\_\_\_, Montana Zip)

(telephone number)

NOTE: Place this notice in the grantee's file for  
Acquisition/Relocation.



EXHIBIT VII-B

PRELIMINARY ACQUISITION NOTICE

(Type of letterhead of grantee)

Date

(name of property owner)

(mailing address)

( , Montana Zip)

Dear (name of property owner):

This is to inform you that the (name of grantee: City, Town or County of ) has determined to acquire your property at (describe by address or general location, and legal description, for example: 345 Chinook Avenue, Lots 8-9, Block 6 of the Palmer Addition) to be used for (describe proposed CDBG activity, for example: construction of a fire station adjacent to the existing library.)

A brochure describing your rights and the (City, Town or County)'s procedures for acquiring property is enclosed for your information. If you have any questions, please contact our acquisition/relocation specialist ( name ) at (telephone number).

The (City, Town or County) will be hiring an independent appraiser to appraise your property. You have the right to accompany him or her on the property inspection if you wish to do so. A letter inviting you to accompany him or her will be sent by the appraiser at least five days prior to the visit. This notice is not a notice to vacate and does not establish eligibility for relocation payments or other relocation assistance.

Sincerely,

(name )

CDBG Administrator

(mailing address)

( , Montana Zip)

Enclosure: When A Public Agency Acquires Your Property



EXHIBIT VII-C

WRITTEN OFFER TO PURCHASE  
(Type on letterhead of grantee)

Date

(name of property owner)  
(mailing address)  
( , Montana Zip)

Dear (name of property owner):

This letter serves as a written offer to purchase property at (describe by address or general location, and legal description, for example: 345 Chinook Avenue, Lots 8-9, Block 6 of the Palmer Addition), which our records indicate is owned by (name of property owner, same as above). This property is required for (describe proposed CDBG activity, for example: construction of a new fire station).

We have had the property appraised by a competent and unbiased fee appraiser and this report has been thoroughly analyzed by a competent appraisal analyst and found to be well supported. Based on the appraisal and review, the (name of grantee: City, Town or County of ) hereby makes you a firm offer in the amount of (\$ ) for the purchase of your property.

We feel that the above offer is most equitable and we urge your favorable consideration and acceptance of it. If this meets with your approval, the CDBG office's acquisition/relocation specialist has prepared an Act of Sale and will assist in any way convenient to you in finalizing the acquisition. Negotiations for the purchase of your property will begin on ( date ).

In addition to the offered purchase price, the CDBG office will also reimburse you for any incidental costs associated with the transfer of the property.

If you feel that the CDBG office has not examined all the relevant information needed to determine just compensation for your property, please contact the acquisition/relocation specialist (name) at (telephone number), who will be more than willing to review the material.

Thank you very much for your cooperation and favorable consideration of this offer.

Sincerely,

(name of Chief Elected Official)  
(Mayor or Chairperson, County Commission)  
(name of grantee, City, Town or County of )

Enclosure: Statement of the Basis for the Determination of Just Compensation

## STATEMENT OF THE BASIS FOR DETERMINATION OF JUST COMPENSATION

### Description and Location of Property

The (name of grantee: City, Town or County of \_\_\_\_\_) proposes to purchase land and improvements at (describe by address or general location, and legal description, for example: 345 Chinook Avenue, Lots 8-9, Block 6 of the Palmer Addition) from owner (name \_\_\_\_\_) at (owner's street address, \_\_\_\_\_, Montana Zip). It is a (describe use and character of structure and area, for example: single-family residential unit which conforms to zoning, present use, surrounding land use, and area trends.)

### Purpose of Purchase

The (name of grantee) intends to use the whole parcel for (describe proposed CDBG activity, for example: construction of a new fire station adjacent to the existing library).

### Improvements

(Describe the structure in detail, for example: it is a one-story, single-family residence of wood frame construction with concrete foundation, stucco siding, a tar and gravel roof and aluminum gutters and downspouts.

It contains a living room, kitchen, center hall, two bedrooms and one bath.

Interior finish is hardwood floors, except hall, two bedrooms and one bath.

The kitchen has counters and painted wood cabinets. There are no built-in appliances.

Heat is gas-fired, forced air, 120,000 BTU furnace.

The house is 25 years old. Design is good. Maintenance is average.

### Declaration of Offer

Based on the appraisal, the (name of grantee) hereby makes you an offer in the amount of (\$\_\_\_\_\_) for the purchase of your property. This offer is for the fair market value of your property and does not include any consideration of decrease or increase in value contributable to the project for which it is being acquired. It reflects no relocation payments which the owner/tenant may be entitled to receive under provisions of Title II of the Uniform Relocation and Real Property Acquisition Policies Act of 1970.

EXHIBIT VII-D

FINAL NOTICE TO ACQUIRE BY NEGOTIATION  
(Type on letterhead of grantee)

Date

(name of property owner)

(mailing address)

( , Montana Zip)

Dear (name of property owner):

This letter serves as final written notice of the (name of grantee: City, Town or County of )'s offer to purchase through negotiations your property at (describe by address or general location, and legal description, for example: 345 Chinook Avenue, Lots 8-9, Block 6 of the Palmer Addition.) We have taken the following steps to attempt to reach a mutually agreed upon price for the property.

(Describe dates and actions taken, for example:)

May 1, 1984      Submitted a written offer to you of \$37,500.

May 20, 1984      Met with you and your representative to review additional material which you felt should be included in determining just compensation.

May 27, 1984      Submitted a second written offer based on the information you presented, raising the level of compensation to \$39,300. At that time we established June 13, 1984 as the date by which you must indicate your acceptance or refusal of the second written offer.

As we have not received any correspondence or communications from you concerning our second written offer of (date of second offer, same as above, for example: May 27, 1984) the CDBG office has no choice but to proceed with condemnation of your property through exercise of the (City, Town, or County's powers of eminent domain as provided for under Title 70, Chapter 30, Part 101 et.seq., MCA).

We strongly recommend that you obtain legal counsel to represent you in these proceedings.

We regret that we must take this action. If you desire to reconsider our last offer, please contact (name), Acquisition/Relocation Specialist for the (name of grantee) Office, immediately, at (telephone - number).

Sincerely,

(Name)

CDBG Administrator

(Mailing Address)

( , Montana Zip)



# Exhibit VII-E

CONFIDENTIAL

## FAMILY SURVEY GUIDE\*

DATE: \_\_\_\_\_ INTERVIEWED BY: \_\_\_\_\_

Number of Dwelling Units: \_\_\_\_\_

Applicant's Name: \_\_\_\_\_ Age: \_\_\_\_\_  
                     First                      Middle                      Last

If married, spouse's name: \_\_\_\_\_ Age: \_\_\_\_\_

Address: \_\_\_\_\_

Property Description: Lot \_\_\_\_\_ Square \_\_\_\_\_ Subdivision \_\_\_\_\_

### NUMBER OF DEPENDENTS

Names	Age	Sex
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EMPLOYMENT DATA: (If less than two (2) years, give name of previous employer)

Employer's Name: \_\_\_\_\_ How Long: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Monthly Salary: \_\_\_\_\_

Previous Employer: \_\_\_\_\_ How Long: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Monthly Salary: \_\_\_\_\_

Spouse's Employer: \_\_\_\_\_ How Long: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Monthly Salary: \_\_\_\_\_

Previous Employer: \_\_\_\_\_ How Long: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Monthly Salary: \_\_\_\_\_

\*This survey is suitable for both loans and grants. A simplified form may be more appropriate when used only for grants.

OTHER INCOME AND SOURCE

Social Security, Welfare, Retirement or Veteran, Rental Property Income:

\_\_\_\_\_ Amount: \_\_\_\_\_

\_\_\_\_\_ Amount: \_\_\_\_\_

Savings Bonds &amp; Other Securities: \_\_\_\_\_ Amount: \_\_\_\_\_

Social Security #: \_\_\_\_\_ Spouse's Social Security #: \_\_\_\_\_

Name of Bank: \_\_\_\_\_

Savings Account: Yes ( ) No ( ) Amount: \_\_\_\_\_

Checking Account: Yes ( ) No ( ) Amount: \_\_\_\_\_

Other Real Estate Owned: \_\_\_\_\_ Value: \_\_\_\_\_

MONTHLY HOUSING EXPENSES:

	<u>Monthly Payments</u>	<u>Balance Due</u>	<u>Name of Company</u>
Current Mortgage	_____	_____	_____
Hazard Insurance	_____	_____	_____
Flood Insurance	_____	_____	_____
Property Taxes (Secure information from Tax Receipt)	_____	_____	_____
Heat and Utilities (Name Account is in)	_____	_____	_____
TOTAL:	_____	_____	_____

Name Property is  
listed under: \_\_\_\_\_LIABILITIES:

Automobile \_\_\_\_\_

Other Loans/Credit Accounts (specify)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TOTAL: \_\_\_\_\_

MONTHLY FIXED CHARGES:

Income Taxes  
(Federal and State) \_\_\_\_\_

Social Security \_\_\_\_\_

Retirement \_\_\_\_\_

Life Insurance \_\_\_\_\_

Other \_\_\_\_\_

TOTAL: \_\_\_\_\_

TOTAL MONTHLY COSTS  
(Housing, Other Liabilities, Fixed Charges) \$ \_\_\_\_\_

OTHER:

Record of Previous Foreclosures:

Yes ( )      No ( )

If yes, property address: \_\_\_\_\_

Name and Address of Lender: \_\_\_\_\_

Remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CERTIFICATION OF APPLICANT(S):

I (we) hereby certify that the statements made by me (us) are true and correct to the best of my (our) belief and knowledge.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



EXHIBIT VII-F

NINETY-DAY NOTICE TO VACATE

(Type on letterhead of grantee)

Date

(name of person to be relocated)

(mailing address)

(\_\_\_\_\_, Montana Zip)

Dear (name of person to be relocated):

As you know, the (name of grantee: City, Town or County of \_\_\_\_\_) is purchasing your (home/apartment). The purchase will be completed on (date, no later than 60 days after date of this Notice). We have been in contact with you since (date) to help you locate and move into suitable replacement housing. We referred to to (number) of units.

The (house/apartment) you are now living in must be vacated in 90 days, by (date, must be at least 90 days after date of this Notice). We will send you a second notice 30 days before you must vacate.

If you have any questions or need additional assistance in completing your move, please contact our Acquisition/Relocation Specialist (name) at (telephone number).

Sincerely,

(name)

CDBG Administrator

(mailing address)

(\_\_\_\_\_, Montana Zip)



EXHIBIT VII-G

THIRTY-DAY NOTICE TO VACATE

(Type on letterhead of grantee)

Date

(name of person to be relocated)

(mailing address)

( , Montana Zip)

Dear (name of person to be relocated):

This letter is to inform you that you must vacate this house/apartment within 30 days on (date, must be 30 days after date of this letter and 30 days after the name of grantee: City, Town or County of  
has title to the property).

If you have any questions or need additional assistance in completing your move, please contact our Acquisition/Relocation Specialist (name) at (telephone number).

Sincerely,

(name)

CDBG Administrator

(mailing address)

( , Montana Zip)





Exhibit VII-H  
INSPECTION REPORT FORMAT

Displaced Person's Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

Special Requirements: Handicapped ☐  
Other ☐ Specify \_\_\_\_\_

Address: \_\_\_\_\_ Date Inspected: \_\_\_\_\_

- A. Does the building meet Section 8 Housing Quality Standards? YES NO

If no, what would be required to bring the unit to Section 8 standards?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- B. Does the building meet Local Housing Code/ Occupancy Code? YES NO

If no, what would be required to bring the unit to code in addition to items listed in A above?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- C. Estimated Date of Construction: \_\_\_\_\_

D. If prior to 1950, results of paid analysis: \_\_\_\_\_

If lead-based paint, what is necessary to  
remove the hazard?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E. If there are deficiencies and the unit is  
slated for use as replacement housing,  
date of re-inspection. \_\_\_\_\_

Were all certified deficiencies  
corrected?

YES NO

List uncorrected deficiencies:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

F. If uncorrected deficiencies, date of  
re-inspection: \_\_\_\_\_

G. Description of Unit

\_\_\_\_ Bedrooms    \_\_\_\_ Kitchen    \_\_\_\_ Family Room    \_\_\_\_ Attic  
\_\_\_\_ Bathrooms    \_\_\_\_ Living Room    \_\_\_\_ Basement

Construction: \_\_\_\_\_

General Condition: \_\_\_\_\_

H. I \_\_\_\_\_ (name) \_\_\_\_\_, \_\_\_\_\_ (title) \_\_\_\_\_ hereby certify  
that the building at \_\_\_\_\_ (address) \_\_\_\_\_  
meets all (1) applicable housing and occupancy codes, or (2) Section  
8 Existing Housing Quality Standards.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

EXHIBIT VII-I

LETTER TO RELOCATEE IN A SUBSTANDARD UNIT

(Type on letterhead of grantee)

Date

(name of person to be relocated)

(mailing address)

(\_\_\_\_\_, Montana Zip)

Dear (name of person to be relocated):

Relocation regulations established by federal law will not permit the (name of grantee: City, Town or County of \_\_\_\_\_) to make a rental assistance payment to you until you move into an apartment or house that meets their definition of a "decent, safe and sanitary" replace unit. Your new apartment does not meet this definition because:

(List reasons, such as wiring, does not meet the electrical code or house contains lead-base paint.)

In order to be eligible for a replacement housing payment, you must move into an apartment or house that meets all of these requirements within one year from the date you moved from your old apartment on (address). You have to move into a qualified apartment or house by (date, one year from date of displacement). Our Acquisition/-Relocation Specialist (name), who can be reached at (telephone number) has a list of eligible houses and apartments and will help you find one and will arrange inspections of any apartments or houses you find on your own.

If you move into a "decent, safe and sanitary house or apartment" by (date, same as above), you would be eligible to receive a rental assistance payment up to a maximum of \$4,000 to cover the difference in the monthly cost between your old apartment and a new apartment for four years, or the difference between your new rent and 30 percent of your gross monthly income, whichever is less. This payment will be made in a lump sum if you file a claim for benefits within 18 months after you move into a decent, safe and sanitary apartment or house.

If you choose to purchase a home, you would be eligible for \$2,000 for downpayment assistance. Up to an additional \$2,000 would be available if you match it dollar for dollar (i.e., if you put in \$500, you would get an extra \$500; if you put in \$2,000, you would get an additional \$2,000) for a total of \$4,000 in downpayment assistance. You are entitled to these benefits if you move into a decent, safe and sanitary replacement unit by (date, same as above) and file a claim within 18 months of completing the move. The (name of grantee) has already set aside money to pay you.

In order to receive these benefits, you must relocate into a standard unit. Please contact (name of relocation specialist), who will help you find and move into a standard unit and is available to answer any questions you might have.

Sincerely,

(name)

CDBG Administrator

(mailing address)

(\_\_\_\_\_, Montana Zip)

EXHIBIT VII-J

LETTER OF ACKNOWLEDGEMENT  
SERVICES AND PAYMENTS RENDERED

Date

(name of acquisition/relocation specialist)  
CDBG Office  
(mailing address)  
(\_\_\_\_\_, Montana Zip)

To: \_\_\_\_\_ (name) \_\_\_\_\_, Acquisition/Relocation Specialist

This is to certify that the Relocation Assistance, Services and Payments rendered by the (name of grantee: City, Town or County of \_\_\_\_\_) CDBG office at the time of my displacement from (former address) to (new address) was done to my satisfaction.

This is to certify that I received reimbursement for my moving expenses and/or a Relocation Payment from the (name of grantee) CDBG office as indicated below.

MOVING EXPENSES:

\_\_\_\_\_ Fixed payment of \$\_\_\_\_\_.

\_\_\_\_\_ Reimbursement of paid receipt from a mover or direct payment to a mover or \$\_\_\_\_\_.

ADDITIONAL RELOCATION PAYMENTS (Tenants and Certain Others)

\_\_\_\_\_ Downpayment assistance of a lump sum of \$\_\_\_\_\_.

\_\_\_\_\_ Rental assistance payment of \$\_\_\_\_\_ in a lump sum.

REPLACEMENT HOUSING PAYMENT (Owner-Occupants)

\_\_\_\_\_ Replacement housing payment in a lump sum of \$\_\_\_\_\_.

Sincerely,

(signature of claimant)  
Printed or typed name of claimant



# **Chapter VIII**

## **Public Facilities Projects**





## CHAPTER VIII

### PUBLIC FACILITIES PROJECTS

#### OVERVIEW

The procedures described in this chapter are designed to:

- provide for fair and competitive awards of all contracts and subcontracts for construction of public facilities projects; and
- ensure that contractors and subcontractors comply with the applicable federal and state requirements such as labor standards, civil rights, and procurement.

The intent of the process described in this chapter is to provide information about construction contract opportunities, to ensure equal treatment of all potential contractors, and to inform potential contractors of their responsibilities when accepting a contract funded in whole or in part by CDBG dollars. Fair and competitive procedures for selection of contractors are also designed to protect the grantee from litigation or charges of impropriety related to the awarding of public contracts to private firms.

#### APPLICABLE LAWS

The following State laws and federal regulations set forth the principles for selection and awarding of construction contracts. In addition to compliance with the following, grantees must comply with applicable requirements discussed in all of the preceeding chapters of this Manual.

#### -- LICENSING AND FEES -- Section 37-71-201, MCA

Requires that any person(s) performing as a contractor on a public construction project within the State of Montana obtain a Class C license from the Montana Department of Commerce. Person(s) working on contracts valued at less than \$5,000 are exempt from this provision.

-- BID SECURITY -- Sections 18-1-201, et seq., MCA

Requires that all bids be accompanied by bid security to protect the public authority in the event a successful bidder fails or refuses to enter into a contract.

-- PERFORMANCE, LABOR AND MATERIAL BONDS -- Section 18-2-201, MCA

Requires that any contractor provide a ten percent bond that ensures that the contractor will "(a) faithfully perform all of the provisions of such contract; (b) pay all laborers, mechanics, subcontractors, and materialmen; and (c) pay all persons who shall supply...provisions, material, or supplies for the carrying on of such work."

-- COUNTY CONTRACTS -- Title 7, Chapter 5, Part 23, MCA

Requires competitive bidding for contracts in excess of \$10,000, advertising of such contracts once per week for three weeks before bids are opened, and award of contracts to the lowest and best responsible bidder.

-- MUNICIPAL CONTRACTS AND FRANCHISES -- Title 7, Chapter 5, Part 43,

Provides similar guidance for the awarding of contracts by Montana cities and towns. Under 7-5-4302, municipalities must advertise once per week for two weeks and the second publication must not be made less than five days or more than 12 days before bid opening.

-- PROCUREMENT STANDARDS -- OMB Circular A-102, Attachment 0

Outlines required procedures for selection and award of contracts funded in whole or in part by federal funds. These procedures are designed to avoid unnecessary or duplication of purchases, obtain favorable prices for goods and services without sacrificing quality, ensure maximum open and free competition, and promote national goals related to equal employment opportunity and affirmative action.

Establishes bonding requirements for grants. These include a bid guarantee from each bidder equivalent to five percent of the bid price (note: this is less restrictive and therefore superceded by State law which requires ten percent), a performance bond on the part of the contract for 100 percent of the contract price, and a payment bond on the part of the contractor for 100 percent of the contract price. A copy of Attachment B is included in the Requirements Notebook.

#### LOCAL GRANTEE RESPONSIBILITIES

The following steps are provided as a guide to implementation of public facilities projects. They should be followed along with applicable requirements in preceeding chapters.

##### Step 1 -- Prepare Engineering and/or Architectural Design and Specification

If the grantee is not utilizing an architect and/or engineer for general project management as described in Chapter I of the manual, the grantee should follow the instructions in that Chapter along with Chapter III, Procurement Standards, for selecting an engineer or architect to prepare the final project plans including drawings and material specifications.

Upon selection of an engineer/architect the grantee must contact the State CDBG liaison to determine whether the individual or firm is ineligible to participate in federally assisted projects as a result of past failures to comply with federal program requirements. (Refer to Chapter VI, Labor Standards for instructions on verifying contractor eligibility.)

As described in Chapters I and III, the contract between the engineer/architect and the grantee should be as specific as possible. In particular, the contract should contain a listing of products (e.g. maps, drawings) that will be provided by the architect or engineer.

## Step 2 -- Prepare Bid Package

Before inviting bids on any contract, the grantee should take the following steps to ensure that the bid package contains all the relevant information that bidders will need to respond adequately:

- the architect/engineer should provide the grantee with a set of drawings and specifications for the construction project including an accurate and clear description of the technical requirements of the project and a certification that the design takes into account requirements of the Architectural Barriers Act related to accessibility by handicapped persons. The certification (Exhibit VIII-A) must be co-signed by a grantee official and included in the contract file. A copy must be sent to the CDBG liaison, along with a Transmittal of Contract Document Checklist (Exhibit VIII-B.) The purpose of the checklist is to have the architect/engineer who prepared the document, the local CDBG project manager, or chief elected official certify that the bid document includes all applicable federal requirements. Finally, the plans and drawings must be stamped by an architect/engineer registered or licensed by the Montana Department of Commerce;
- acquire any property, easements, or rights-of-way that might be required for construction of the public facility. (See Chapter VII, Acquisition/Relocation);
- obtain information from local public utilities regarding underground installations. The grantee should request a map of the project site which will be included in the bid package. The request should contain a cut-off date for response (generally 30 days) after which the grantee would not be held liable for damages to underground facilities;
- determine the cost and pricing format. Contracts may be either lump sum or unit priced. "Cost Plus" contracts may not be used; and

-- prepare the bid package including at the least the following items:

- Advertisement for Bids (Exhibit VIII-C)
- information on the method of bidding, process by which the bids will be evaluated, and the method of contract award (Exhibit VIII-D)
- General Conditions (Exhibit VIII-E)
- Supplemental General Conditions: Technical Drawings and Specifications Required; Federal and State Requirements related to Equal Opportunity, Insurance, and Hazards; and Wage Determinations (Exhibit VIII-F)
- Bid Proposal Form - Lump Sum (Exhibit VIII-G)

-or-

- Bid Proposal Form - Unit Price (Exhibit VIII-H)
- Bid Bond Form (Exhibit VIII-I)
- information on Performance and Payment Bond Requirements (Exhibit VIII-J)
- Contractor and Subcontractor Certifications (Exhibit VIII-K).

Once the complete bid package has been assembled, it should be reviewed by the grantee's attorney for completeness and consistency with State and federal laws and regulations.

### Step 3 -- Advertise Bid Solicitation

An advertisement of the bid should be drafted based on the information on the "Advertisement for Bid" included as part of the bid package. Pursuant to Section 7-5-4302, MCA, municipalities must advertise once per week for two weeks and the second publication must be made not less than five days or more than 12 days before bid opening. Section 7-5-23-1, MCA, requires that counties must advertise once per week for three weeks before bids are opened.

Any amendments to the bid package must be mailed to each bidder, and every bidder must be given an appropriate period of time to respond to the amendments.

#### Step 4 -- Log Each Bid

Upon receipt by the grantee, each bid should be logged by time and date of receipt and offer. The bids should remain sealed and safely stored until the bid opening.

#### Step 5 -- Conduct Bid Opening

The bid opening should be conducted in a businesslike manner with each bid being read aloud. The low bid bidder will be determined at this time.

In the event that all bids exceed the amount of funds available for the construction project, the grantee has three options:

- seek additional financing resources such as general revenues or bond proceeds;
- identify "deductible alternatives," elements of the bid that may be reduced or eliminated; or
- modify the bid package and repeat the entire bid process as outlined above.

Under no circumstances can the grantee negotiate with the low bidder to bring the offer in line with the project budget.

Where the grantee chooses the "deductible alternatives" approach, each bid should be re-evaluated based on the modified scope of goods and services to be provided. The grantee must, however, be careful not to significantly alter the program benefits when using this approach, as the grant was awarded based on the level of program benefits identified in the CDBG application.

### Step 6 -- Review Low Bid

Following the bid opening the low bid should be reviewed to ensure that the bid submission was technically and legally responsive to the solicitation for bids, that the contractors and all subcontractors are qualified and have the capacity to carry out the project as scheduled, and that the contractor does not appear on either HUD or DOL lists of ineligible contractors. Contractor eligibility is discussed in greater detail in Chapter VI, Labor Standards. Exhibit VI-B contains a sample letter that may be sent to DOC to request a determination of eligibility. If the total contract exceeds \$10,000, the contractor must prepare a Section 3 plan to ensure maximum employment and business opportunities to low and moderate income persons and residents in the project area. (See Exhibit V-H of the Civil Rights Chapter.)

If the low bid proves to be unsatisfactory for any reason, and the grantee chooses to use the next lowest bidder, a statement of justification should be sent to the low bidder and a copy should be retained in the contract file.

### Step 7 -- Award Contract

The grantee should make the contract award within 30 days of the bid opening unless the funds are not yet available or the project requires some legislative action.

The contract should consist of an executed contract document (Exhibit VIII-I.) with the following attachments:

- all items included in the bid package;
- contractor's bid proposal;
- contractor certifications; and
- bond and insurance forms.

#### Step 8 -- Hold Pre-Construction Conference

The conference should be held immediately following the contract award. Although the conference is designed for the prime contractor, the grantee and prime contractor may elect to include all subcontractors in the discussions.

The conference represents the last time prior to actual project construction that the grantee can give instructions to the contractor. These instructions should include a review of the project and timetable, method for payment, and contractor responsibilities related to civil rights, labor standards, and other federal, State, and local requirements.

Minutes of the pre-construction conference should be placed in the contract file and cross-referenced in the civil rights and labor standards files.

#### Step 9 -- Issue Notice to Proceed

Upon execution of the contract and holding the pre-condition conference, the grantee may then provide the prime contractor(s) with a Notice to Proceed. This Notice establishes the construction starting date, the estimated date of completion, and the basis for assessing liquidated damages. (In the event a contractor is unable to complete a construction project, the grantee may assess the contractor for the costs the grantee must incur in order to complete the project. This assessment generally takes into account the work actually performed by the original contractor and the total amount of any contracts to subsequent contract to satisfactorily complete the construction.) These provisions must be consistent with the corresponding elements of the contract document.

A copy of the Notice to Proceed must be sent to the CDBG liaison. Additionally, the CDBG liaison should receive a notice of contract award and pre-construction conference, and date on which construction will start. (Exhibit VIII-M).



### Step 10 -- Monitor Contractor Activities

Throughout the construction period, the grantee must monitor the contractor for performance in line with the project's technical specifications and for compliance with all federal, State, and local standards.

Performance monitoring must be done by the architect/engineer. The performance monitoring should consist of the following elements:

- general supervision -- includes identifying the need for any construction adjustments and preparation of contract amendments. Also, involves on-going monitoring of the estimated schedule for completion;
- quality control -- to ensure compliance with technical specifications and conformance with codes and standards;
- quality control -- to ensure that the contractor is providing materials and products consistent with the quantities identified in the design and specifications; and
- certification of pay estimates -- to be used by the fiscal officer to verify estimated costs for partial payments. The architect/engineer should also obtain evidence that the contractor has made partial payments to any subcontractor or materialmen.

In instances where the project was awarded based on a fixed price bid, the grantee may want the contractor to prepare a cost breakdown showing the amount of funding associated with each element of the construction contract. This information can be used by the architect/engineering for performance monitoring and by the local CDBG fiscal officer for determining the accuracy of requests for payments. Partial payments may be made up to 90 percent of the total amount of compensation in the contract. The remaining ten percent is held pending the final inspection and acceptance of work.

Local monitoring of federal and State requirements should be conducted on an on-going basis by the local CDBG office to assure compliance with civil rights, labor and other requirements.

#### Step 11 -- Conduct Final Inspection

Upon completion of the construction activities, the architect/-engineer must provide the grantee with a set of as-built plans with a request for final payment. Before making the final payment less ten percent for retainage, the grantee must conduct a final inspection of the construction work. (Water and sewer projects also require an inspection by the Montana Department of Health and Environmental Sciences.) Additionally, the grantee should determine whether all federal and State requirements (e.g. labor standards) have been satisfied, and that all contract files are complete.

The grantee can then issue an acceptance of work and make final payment less the five percent retainage. After 45 days and upon submission of a clean lien certificate by the contractor, the grantee may release the retainage.

If after 45 days there remain claims or liens against the contract, the grantee must take appropriate action including making payments from the retainage and/or the performance and payment bonds as prescribed by State law.

#### Step 12 -- Maintain Records

For each prime contract the grantee should maintain a file with the following documentation required by this chapter and chapters V and VI:

- design and cost estimates;
- evidence of easements and acquisition;
- bid documents, including required civil rights, labor, and other provisions;
- evidence of bid advertising;

- minutes of bid opening including tabulation of bids;
- evidence of low bid review;
- letter of request for contractor eligibility;
- DOC notice of contractor eligibility;
- Notice of Contract Award;
- executed contract documents with attachments, including contractor's Section 3 plan;
- minutes of pre-construction conference;
- copy of Notice to Proceed;
- copy of Notice of Contract Award and Pre-construction Conference;
- monitoring and inspection reports;
- minority business enterprise form (Exhibit V-I);
- monthly utilization reports provided by contractor (Exhibit VIII-N);
- evidence that required labor notices were posted at the construction site;
- contractor's weekly payroll and Statement of Compliance;
- construction worker interviews;
- evidence of any violations and resolution;
- evidence of the final inspection;
- Notice of Acceptance of Work;
- Clean Lien Certificate; and
- evidence of disposition of outstanding claims.



CHAPTER VIII  
EXHIBITS

- VIII-A - Architect's Certification: Compliance with Minimum Standards for Accessibility by the Physically Handicapped
- VIII-B - Transmittal of Contract Document Checklist
- VIII-C - Advertisement for Bids
- VIII-D - Instructions to Bidders
- VIII-E - General Conditions
- VIII-F - Supplemental General Conditions
- VIII-G - Bid for Lump Sum Contracts
- VIII-H - Bid for Unit Price Contracts
- VIII-I - Bid Bond
- VIII-J - Performance and Payment Bonding Requirements
- VIII-K - Contractor Certifications
- VIII-L - Contract
- VIII-M - Notice of Contract Award and Preconstruction Conference
- VIII-N - Monthly Employment Utilization Report



Exhibit VIII-A

ARCHITECT'S CERTIFICATION:  
COMPLIANCE WITH MINIMUM STANDARDS FOR  
ACCESSIBILITY BY THE PHYSICALLY HANDICAPPED

Contract No. \_\_\_\_\_  
Project Name \_\_\_\_\_  
Address \_\_\_\_\_

Pursuant to the requirements of the Architectural Barriers Act of 1968, 42 USC 4151, and the regulations issued subsequent thereto, the undersigned certifies that the design of the above-mentioned project is in conformance with the minimum standards contained in the American Standard Specifications for Making Buildings and Facilities Accessible To and Usable By the Physically Handicapped, Number A-117.1R-1971 (as modified by 41 CFR 101-19.603).

Architect for the Project:  
(Legal Name and Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Registration Number: \_\_\_\_\_

Signature: \_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

Official Signature  
For Grantee: \_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

Date: \_\_\_\_\_

To: Montana Department of Commerce  
Community Development Division  
Cogswell Building, Room C-211  
Capitol Station  
Helena, Montana 59620





Exhibit VIII-B

TRANSMITTAL OF CONTRACT DOCUMENT CHECKLIST

(Type on letterhead of grantee or project engineer)

(Date)

Montana Department of Commerce  
Community Development Division  
Cogswell Building, Room C-211  
Capitol Station  
Helena, MT 59620

This is to certify that the bid document prepared by \_\_\_\_\_  
\_\_\_\_\_, dated \_\_\_\_\_ for  
(describe project), in the amount of \$ \_\_\_\_\_  
contains provisions for compliance to the applicable federal  
requirements as outlined on the attached checklist.

Your review of the attached checklist would be appreciated. If you  
have any questions or comments please contact ( name ) at  
(telephone number).

Sincerely,

(Signature)

CDBG Project Manager

Chief Elected Official, or Project Engineer

\_\_\_\_\_, CDBG Project  
\_\_\_\_\_, Montana \_\_\_\_\_

CDBG CONSTRUCTION CONTRACT CHECKLIST

\_\_\_\_\_ Davis - Bacon (40 USC 276a to a-7) (29 CFR P & 5)  
\_\_\_\_\_ Copeland Anti-kickback (18 USC 874) (29 CFR P & 3)  
\_\_\_\_\_ Contract Work Hours and Safety Standard Act (40 USC  
327 - 330) (29 CFR P & 5)  
\_\_\_\_\_ Title VI of the Civil Rights Act of 1964  
\_\_\_\_\_ Title VIII of the Civil Rights Act of 1968  
\_\_\_\_\_ Executive Order 11246 (7 paragraph if over \$10,000)  
\_\_\_\_\_ Executive Order 11063 (non-discrimination in housing  
and lending)  
\_\_\_\_\_ Section 109 of the Housing and Community Development  
Act of 1964  
\_\_\_\_\_ Section 3 of the Housing and Urban Development Act of  
1968  
\_\_\_\_\_ Age Discrimination Act of 1975, as amended  
\_\_\_\_\_ Section 504, Rehabilitation Act of 1973, as amended  
\_\_\_\_\_ Architectural Barriers Act of 1968  
\_\_\_\_\_ DOC Access to Contractor's Records Clause  
(IF OVER \$100,000)  
\_\_\_\_\_ Section 306 of the Clean Air Act (42 USC 1857)  
\_\_\_\_\_ Clear Water Act of 1977 (33 USC 1368, Section 508)  
\_\_\_\_\_ EPA Regulations at 40 CFR, Part 15

Exhibit VIII-C

ADVERTISEMENT FOR BIDS

Owner: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Separate sealed BIDS for the construction of (briefly describe nature, scope, and major elements of the project) \_\_\_\_\_

\_\_\_\_\_

will be received by \_\_\_\_\_

at the office of \_\_\_\_\_

until \_\_\_\_\_ (Standard/Daylight Savings Time),

\_\_\_\_\_, 19\_\_\_\_, and then at said office publicly opened

and read aloud.

The CONTRACT DOCUMENTS may be examined at the following locations:

\_\_\_\_\_

\_\_\_\_\_

Copies of the CONTRACT DOCUMENTS may be obtained at the office of

\_\_\_\_\_ located at \_\_\_\_\_

upon payment of \$\_\_\_\_\_ for each set.

Any BIDDER, upon returning the CONTRACT DOCUMENTS promptly and in good condition, will be refunded its payment, and any non-bidder upon so returning the CONTRACT DOCUMENTS will be refunded \$\_\_\_\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature



Exhibit VIII-D

INSTRUCTIONS TO BIDDERS

1. USE OF SEPARATE BID FORMS

These Contract Documents include a complete set of bidding and Contract forms which are for the convenience of bidders and are not to be detached from the Contract Document, filled out, or executed. Separate copies of Bid Forms are furnished for that purpose.

2. INTERPRETATIONS OF ADDENDA

No oral interpretation will be made to any Bidder as to the meaning of the Contract Documents or any part thereof. Every request for such an interpretation shall be made in writing to the Local Public Agency. Any inquiry received seven or more days prior to the date fixed for opening of Bids will be given consideration. Every interpretation made to a Bidder will be in the form of an Addendum to the Contract Documents, and when issued, will be on file in the office of the Local Public Agency and the office of the Engineer at least five days before Bids are opened. In addition, all Addenda will be mailed to each person holding Contract Documents, but it shall be the Bidder's responsibility to make inquiry as to the Addenda issued. All such Addenda shall become part of the Contract and all Bidders shall be bound by such Addenda, whether or not received by the Bidders.

3. INSPECTION OF SITE

Each Bidder should visit the site of the proposed work and fully acquaint itself with the existing conditions there relating to construction and labor, and should fully inform itself as to the facilities involved, the difficulties and restrictions attending the performance of the Contract. The Bidder should thoroughly examine and familiarize itself with the Drawings, Technical Specifications, and all other Contract Documents. The Contract by the execution of the Contract shall in no way be relieved of any obligation under it due to its failure to receive or examine any form or legal instrument or to visit the site and acquaint itself with the conditions there existing and the Local Public Agency will be justified in rejecting any claim based on facts regarding which it should have been on notice as a result thereof.

4. ALTERNATIVE BIDS

No alternative bids will be considered unless alternative bids are specifically requested by the technical specifications.

5. BIDS

a. All Bids must be submitted on forms supplied by the Local Public Agency and shall be subject to all requirements of the Contract Documents, including the Drawings, and these INSTRUCTIONS TO BIDDERS.

All Bids must be regular in every respect and no interlineations, excisions or special conditions shall be made or included in the Bid Form by the Bidder.

b. Bid Documents including the Bid, the Bid Guaranty, the Non-Collusion Affidavit and the Statement of the Bidder's Qualifications (if requested) shall be enclosed in envelopes (outer and inner), both of which shall be sealed and clearly labeled with the words "Bid Documents", project number, name of Bidder, and the date and time of bid opening in order to guard against premature opening of the Bid.

c. The Local Public Agency may consider as irregular any Bid on which there is an alteration of or departure from the Bid Form hereto attached and at its option may reflect the same.

d. If the Contract is awarded, it will be awarded by the Local Public Agency to a responsible Bidder on the basis of the lowest Bid and the selected Alternative Bid items, if any. The Contract will require the completion of the work according to the Contract Documents.

e. Each Bidder shall include in its Bid the following information:

Principals

Names

Social Security Numbers

Home Addresses, including City, State & Zip Code

Firm

Name

Treasury Number

Address including City, State & Zip Code

6. BID GUARANTY

a. The Bid must be accompanied by a Bid guaranty which shall not be less than five (5) percent of the amount of the Bid. At the option of the Bidder, the guaranty or a surety company listed in the latest issue of U.S. Treasury Circular 570. The amount of such Bid bond shall be within the maximum amount specified for such Company in said Circular 570. No Bid will be considered unless it is accompanied by the required guaranty. Certified bank drafts or checks must be made payable to the order of \_\_\_\_\_ (agency). Cash deposits will not be accepted. The Bid guaranty shall insure the execution of the agreement and the furnishing of the surety bond or bonds by the successful Bidder, all as required by the Contract Documents.

b. Revised Bids submitted before the opening of Bids, whether forwarded by mail or telegram, if representing an increase in excess of two (2) percent of the original Bid, must have the Bid guaranty adjusted accordingly; otherwise the Bid will not be considered.

c. Certified checks or bank drafts, or the amount thereof, Bid bonds and negotiable U.S. Government bonds of unsuccessful Bidders will be returned as soon as practical after the opening of the Bids.

#### 7. COLLUSIVE AGREEMENTS

a. Each Bidder submitting a Bid to the Local Public Agency for any portion of the work contemplated by the documents on which bidding is based shall execute and attach thereto, an affidavit substantially in the form herein provided, to the effect that it has not entered into a collusive agreement with any other person, firm, or corporation in regard to any Bid submitted.

b. Before executing any subcontract the successful Bidder shall submit the name of any proposed subcontractor for prior approval and an affidavit substantially in the form provided herein.

#### 8. STATEMENT OF BIDDER'S QUALIFICATIONS

Each Bidder shall upon request of the Local Public Agency submit on the form furnished for that purpose (a copy of which is included in the Contract Documents), a statement of the Bidder's qualifications, its experience record in constructing the type of improvements embraced in the contract, its organization and equipment available for the work contemplated, and, when specifically requested by the Local Public Agency, a detailed financial statement. The Local Public Agency shall have the right to take such steps as it deems necessary to determine the ability of the Bidder to perform its obligations under the Contract and the Bidder shall furnish the Local Public Agency all such information and data for this purpose as it may request. The right is reserved to reject any Bid where an investigation of the available evidence or information does not satisfy the Local Public Agency that the Bidder is qualified to carry out properly the terms of the Contract.

#### 9. UNIT PRICES

The unit price for each of the several items in the proposal of each Bidder shall include its pro rata share of overhead so that the sum of the products obtained by multiplying the quantity shown for each item by the unit price Bid represents the total Bid. Any Bid not conforming to this requirement may be rejected as informal. The special attention of all Bidders is called to this provision, for should conditions make it necessary to revise the quantities, no limit will be fixed for such increased or decreased quantities nor extra compensation allowed, provided the net monetary value of all such additive and subtractive changes in quantities of such items of work (i.e., difference in cost) shall not increase or decrease the original contract price by more than twenty-five (25) percent, except for work not covered in the Drawings and Technical Specifications as provided for in the Contract Documents. (If lump-sum Bids are deemed advisable due to local conditions, this section must be revised accordingly.)

#### 10. CORRECTIONS

Erasures or other changes in the Bids must be explained or noted over the signature of the Bidder.

#### 11. TIME FOR RECEIVING BIDS

a. Bids received prior to the advertised hour of opening will be securely kept sealed. The officer whose duty it is to open them will decide when the specified time has arrived, and no Bid received thereafter will be considered; except that when a Bid arrives by mail after the time fixed for opening, but before the reading of all other Bids is completed, and it is shown to the satisfaction of the Local Public Agency that the non-arrival time was due solely to delay in the mails for which the Bidder is not responsible, such Bid will be received and considered.

b. Bidders are cautioned that, while telegraphic modifications of Bids may be received as provided above, such modifications, if not explicit and if in any sense subject to misinterpretation, shall make the bid so modified or amended, subject to rejection.

#### 12. OPENING OF BIDS

At the time and place fixed for the opening of Bids, the Local Public Agency will cause to be opened and publicly read aloud every Bid received within the time set for receiving Bids, irrespective of any irregularities therein. Bidders and other persons properly interested may be present, in person or by representative.

#### 13. WITHDRAWAL OF BIDS

Bids may be withdrawn on written or telegraphic request dispatched by the Bidder in time for delivery in the normal course of business to the time fixed for opening; provided, that written confirmation of any telegraphic withdrawal over the signature of the Bidder is placed in the mail and postmarked prior to the time set for Bid opening. The Bid guaranty of any Bidder withdrawing its Bid in accordance with the foregoing conditions will be returned promptly.

#### 14. AWARD OF CONTRACT: REJECTION OF BIDS

a. The Contract will be awarded to the responsible Bidder submitting the lowest Bid complying with the conditions of the Invitation for Bids. The Bidder to whom the award is made will be notified at the earliest possible date. The Local Public Agency, however, reserves the right to reject any and all bids and to waive any informality in Bids received whenever such rejection or waiver is in its interest.

b. The Local Public Agency reserves the right to consider as unqualified to do the work of general construction any Bidder who does not habitually perform with his forces the major portions of the work involved in construction of the Improvements embraced in this Contract.



## 15. EXECUTION OF AGREEMENT: PERFORMANCE AND PAYMENT BOND

a. Subsequent to the award and within ten (10) days after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the Local Public Agency an Agreement in the form included in the Contract Documents in such number or copies as the Local Public Agency may require.

b. Having satisfied all conditions of award as set forth elsewhere in these documents, the successful Bidder shall, within the period specified in paragraph "a" above, furnish a surety bond in a penal sum not less than the amount of the Contract as awarded, as security for the faithful performance of the Contract, and for the payment of all persons, firms, or corporations to whom the Contractor may become legally indebted for labor, materials, tools, equipment, or services of any nature including utility and transportation services, employed or used by it in performing the work. Such bond shall be in the same form as that included in the Contract Documents and shall bear the same date as, or a date subsequent to that of the Agreement. The current power of attorney for the person who signs for any surety company shall be attached to such bond. This bond shall be signed by a guaranty or surety company listed in the latest issue of the U.S. Treasury Circular 570 and the penal sum shall be within the maximum specified for such company in said Circular 570.

(If applicable State laws require separate bonds as security (1) for the faithful performance of the Contract and (2) for the payment of all services, labor, and materials, revise the above paragraph in accordance with the statutory requirements of the particular State law.)

c. The failure of the successful Bidder to execute such Agreement and to supply the required bond or bonds within ten days after the prescribed forms are presented for signature, or within such extended time as the local public agency may grant, based upon reasons determined to be sufficient, shall constitute a default, and the Agency may either award the contract to the next lowest responsible bidder or readvertise for Bids, and may charge against the Bidder the difference between the amount of the Bid and the amount for which a Contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the Bid Bond. If a more favorable Bid is received by readvertising the defaulting Bidder shall have no claim against the Agency for a refund.

## 16. WAGES AND SALARIES

a. Attention of Bidders is particularly called to the requirements concerning the payment of not less than the prevailing wage and salary rates specified in the Contract Documents and the conditions of employment with respect to certain categories and classifications for employees.

b. The rates of pay set forth under GENERAL CONDITIONS are the minimums to be paid during the life of the Contract. It is therefore the responsibility of Bidders to inform themselves as to local labor conditions such as the length of work day and work week, overtime compensation, health and welfare contributions, labor supply and prospective changes or adjustments of rates.

17. EQUAL EMPLOYMENT OPPORTUNITY

Attention of Bidders is particularly called to the requirement for ensuring that employees and applicants for employment are not discriminated against because of their race, color, religion, national origin, sex, marital status, age, or political ideas.

**EXHIBIT VIII-E  
GENERAL CONDITIONS**

**1. Contract and Contract Documents**

The project to be constructed pursuant to this contract will be financed with assistance from the Montana CDBG Program and is subject to all applicable Federal and State laws and regulations.

The Plans, Specifications and Addenda, hereinafter enumerated in Paragraph 1 of the Supplemental General Conditions shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth.

- |  |                                     |
|--|-------------------------------------|
| 1. Contract and Contract Documents             | 36. Stated Allowances               |
| 2. Definitions                                 | 37. Removal of Debris               |
| 3. Additional Instructions and Drawings        | 38. Detail Estimates                |
| 4. Shop or Setting Drawings                    | 40. General Guaranty                |
| 5. Materials, Services, Facilities             | 41. Conflicting Conditions          |
| 6. Contractor's Title to Materials             | 42. Notice and Service Thereof      |
| 7. Inspection/Testing of Materials             | 43. Provisions Deemed Inserted      |
| 8. "Or Equal" Clause                           | 44. Life/Health Protection          |
| 9. Patents                                     | 45. Subcontracts                    |
| 10. Surveys, Permits and Regulations           | 46. Interest/Congressmen            |
| 11. Contractor's Obligations                   | 47. Other Prohibited Interests      |
| 12. Weather Conditions                         | 48. Use Prior to Acceptance         |
| 13. Protection of Work and Property-Emergency  | 49. Photographs                     |
| 14. Inspection                                 | 50. Suspension of Work              |
| 15. Reports, Records and Data                  | 51. Minimum Wages                   |
| 16. Superintendence by Contractor              | 52. Underpayments of Wages          |
| 17. Changes in Work                            | 53. Fringe Benefits                 |
| 18. Extras                                     | 54. Overtime Compensation           |
| 19. Time for Completion and Liquidated Damages | 55. Apprentices                     |
| 20. Correction of Work                         | 56. Employment Prohibited           |
| 21. Subsurface Conditions-Different            | 57. Anti-Kickback Act               |
| 22. Claims for Extra Cost                      | 58. Classifications Not Listed      |
| 23. Owner Termination of Contract              | 59. Benefits Not Expressed          |
| 24. Construction Schedule/Periodic Estimates   | 60. Posting of Wage Rates           |
| 25. Payments to Contractor                     | 61. Complaints or Testimony         |
| 26. Final Payment as Release                   | 62. Claims and Disputes             |
| 27. Payments by Contractor                     | 63. Questions Re: Regulations       |
| 28. Insurance                                  | 64. Payrolls and Records            |
| 29. Contract Security                          | 65. Specific Coverage               |
| 30. Additional or Substitute Bond              | 66. Ineligible Subcontractors       |
| 31. Assignments                                | 67. Provisions to be Included       |
| 32. Mutual Responsibility or Contractors       | 68. Breach of Labor Standards       |
| 33. Separate Contractors                       | 69. Employment Practices            |
| 34. Subcontracting                             | 70. Contract Termination; Debarment |
| 35. Architect/Engineer's Authority             |                                     |

## 2. Definitions

The following terms as used in this contract are respectively defined as follows:

- (a) "Contractor": A person, firm or corporation with whom the contract is made by the Owner.
- (b) "Subcontractor": A person, firm or corporation supplying labor and materials or only labor for work at the site of the project, for and under separate contract or agreement with the Contractor.
- (c) "Work on (at) the project": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any Subcontractor.

## 3. Additional Instructions and Detail Drawings

The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect/Engineer will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/Engineer in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

## 4. Shop Setting Drawings

The Contractor shall submit promptly to the Architect/Engineer two copies of each shop or setting drawing prepared in accordance with the schedule predetermined aforesaid. After examination of such drawings by the Architect/Engineer and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Architect/Engineer with two corrected copies. If requested by the Architect/Engineer the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Architect/Engineer, the Contractor will nevertheless be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless it notices the Architect/Engineer in writing of any deviations at the time it furnishes such drawings.

## 5. Materials, Services, and Facilities

- (a) It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

- (b) Any work necessary to be performed after regular hours, on Sundays or Legal Holidays, shall be performed without additional expenses to the Owner.

#### 6. Contractor's Title to Materials

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to all materials and supplies used by it in the work, free from all liens, claims, or encumbrances.

#### 7. Inspection and Testing of Materials

- (a) All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. The Owner will pay for all laboratory inspection service direct, and not as part of the contract.
- (b) Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

#### 8. "Or Equal" Clause

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufactures' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment of other manufactures and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the contractor without the Architect/Engineer's written approval.

#### 9. Patents

- (a) The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.
- (b) License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or its authorized licensee, direct by the Owner and not by or through the Contractor.
- (c) If the Contractor uses any design, device or materials covered by letters, patent or copyright, it shall provide for such use by suitable agreement with



the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or its Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connections with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

#### 10. Surveys, Permits, and Regulations

Unless otherwise expressly provided for in the Specifications, the Owner will furnish to the Contractor all surveys necessary for the execution of the work.

The Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of his contract.

The Contractor shall comply with all laws, ordinances, rules, and regulations relating to performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

#### 11. Contractor's Obligations

The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract, within the time herein specified, in accordance with the provisions of this contract and said specifications and in accordance with the plans and drawings covered by this contract any and all supplemental plans and drawings, and in accordance with the directions of the Architect/Engineer as given from time to time during the progress of the work. It shall furnish, erect, maintain, and remove such construction plant and such temporary works as may be required.

The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract and specifications, and shall do, carry on, and complete the entire work to the satisfaction of the Architect/Engineer and the Owner.

#### 12. Weather Conditions

In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer shall direct, the Contractor will, and will cause its subcontractors to protect carefully its and their work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer, any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors so to protect its work, such materials shall be removed and replaced at the expense of the Contractor.

#### 13. Protection of Work Property - Emergency

The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this contract. It shall at all times safely guard and protect its own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such be caused directly by errors contained in the contract or by the Owner, or its duly authorized representatives.

In case of an emergency which threatens loss or injury of property, and/or safety or life, the Contractor will be allowed to act, without previous instructions from the Architect/Engineer, in a diligent manner. It shall notify the Architect/Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Architect/Engineer for approval.

Where the Contractor has not taken action but has notified Architect/Engineer of an emergency threatening injury to persons or damage to the work of any adjoining property, it shall act as instructed or authorized by the Architect/Engineer.

The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 17 of the General Conditions.

14. Inspection

The authorized representatives and agents of the Montana Department of Commerce shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

15. Reports, Records, and Data

The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedule, payrolls, reports, estimates, records, and other data as the Owner may request concerning work performed or to be performed under this contract.

16. Superintendence by Contractor

At the site of the work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Architect/Engineer and shall be one who can be continued in that capacity for the particular job involved unless it ceases to be on the Contractor's payroll.

17. Changes in Work

No changes in the work covered by the approved Contractor Documents shall be made without having prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, a combination of the following methods:

- (a) Unit bid prices previously approved.
- (b) An agreed lump sum
- (c) The actual cost of:

- 1. Labor, including foreman;

2. Materials entering premanently into the work;
3. The ownership or rental cost of construction plant and equipment during the time of use on the extra work;
4. Power and consumable supplies for the operation of power equipment;
5. Insurance;
6. Social Security and old age and unemployment contributions.

To the cost under (c) there shall be added a fixed fee to be agreed upon but not top exceed fifteen percent (15%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

#### 18. Extras

Without invalidating the contract, the Owner may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the Owner or its Architect/Engineer, acting officially for the Owner, and the price is stated in such order.

#### 19. Time for Completion and Liquidated Damages

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed."

The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay the Owner the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work.

The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.



It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein and definite and certain length of time is fixed for the performance of any act whatsoever, and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract, Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; Provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- (a) To any preference, priority or allocation order duly issued by the Government;
- (b) To unforeseen cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- (c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article:

Provided, further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the contract, notify the Owner, in writing, of the cause of the delay, shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

## 20. Correction of Work

All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Architect/Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet its approval they shall be forthwith reconstructed, made good, replaced and/or corrected as the case may be, by the Contractor at its own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Architect/Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgement of the Architect/Engineer shall be equitable.

## 21. Subsurface Conditions Found Different

Should the Contractor encounter sub-surface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, it shall immediately give notice to the Architect/Engineer of such conditions before they are disturbed. The Architect/Engineer will thereupon promptly investigate the conditions, and if it finds that they materially differ from those shown on the Plans or indicated in the Specifications, it will at once make

such changes in the Plans and/or Specifications as it may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 17 of the General Conditions.

22. Claims for Extra Cost

No claim for extra work or costs shall be allowed unless the same was done in pursuance of a written order of the Architect/Engineer approved by the Owner, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of subparagraph 17(c) of the General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the Owner, give access to accounts relating thereto.

23. Right of the Owner to Terminate Contract

In the event that any of the provisions of this contract are violated by the Contractor, or by any of its subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate the contract, such notices to contain the reason for such intention to terminate the contract, and unless within (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Surety and the Contractor and the Surety shall have the right to take over and perform the contract; Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute the same to completion by the contract or by force account for the account and at the expense of the Contractor and the Contractor and his Surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such material, appliances, and plant as may be on the site of the work and necessary therefor.

24. Construction Schedule and Periodic Estimates

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

25. Payments to Contractor

(a) Not later than the 15th day of each calendar month the Owner shall make a

progress payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this contract, but to insure the proper performance of this contract the Owner shall retain ten percent (10%) of the amount of each estimate until final completion and acceptance of all work covered by this contract; Provided, that the Contractor shall submit its estimate not later than the first day of the month; Provided, further, that the Owner at any time after fifty percent (50%) of work has been completed, if it finds that satisfactory progress is being made, may make any of the remaining progress payments in full; Provided, further, that on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made in full, including retained percentages thereon, less authorized deductions.

- (b) In preparing estimates the material delivered on the site preparatory to work done may be taken into consideration.
- (c) All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the contract.
- (d) Owner's Right to Withhold Certain Amounts and Make Application Thereof: The Contractor agrees that it will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the Owner may, after having served written notice on the said Contractor, either pay unpaid bills, of which the Owner has written, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor or his Surety. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

## 26. Acceptance of Final Payment Constitutes Release

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work. No payment, however,

final or otherwise, shall operate to release the Contractor or its sureties from any obligations under this contract or the Performance and Payment Bond.

27. Payments by Contractors

The Contractor shall pay (a) for all transportation and utility services not later than the 20th day of the calendar month following that in which services are rendered, (b) for all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the project, and the balance of the cost thereof, not later than the 30th day following the completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used, and (c) to each of its subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by its subcontractors to the extent to each subcontractor's interest therein.

28. Insurance

The Contractor shall not commence work under this contract until it has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been so obtained and approved.

- (a) Compensation Insurance: The Contractor shall procure and shall maintain during the life of its contract Worker's Compensation Insurance as required by applicable State or territorial law for all of its employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of its employees as are not otherwise protected.
- (b) Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amounts specified in the Supplemental General Conditions.
- (c) Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either (1) require each of its subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Supplemental General Conditions specified in subparagraph (b) hereof, (2) insure the activities of his policy, specified in subparagraph (b) hereof.
- (d) Scope of Insurance and Special Hazards: The insurance required under



subparagraphs (b) and (c) hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by it and, also against any of the special hazards which may be encountered in the performance of this contract as enumerated in the Supplemental General Conditions.

- (e) Builder's Risk Insurance (Fire and Extended Coverage): Until the project is completed and accepted by the Owner, the Owner, or Contractor (at the Owner's option as indicated in the Supplemental General Conditions, Form HUD-4238-N) is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the Owner, the Contractor, subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from its obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and its Surety shall be obligated to full performance of the Contractor's undertaking.
- (f) Proof of Carriage of Insurance: The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificated shall also contain substantially the following statement: "The insurance covered by this certificate will not be cancelled or materially altered, except after (10) days written notice has been received by the Owner."

## 29. Contract Security

The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract prices as security for the faithful performance of this contract and also a payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by State, territorial or local law, as security for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract. The performance bond and the payment bond may be in one or in a separate instruments in accordance with local law.

## 30. Additional or Substitute Bond

If at any time the Owner for justifiable cause shall be or become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the Owner so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by other surety or sureties as may be satisfactory to the Owner. The premiums on such bonds shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the Owner.

## 31. Assignments

The Contractor shall not assign the whole or any part of this contract or any

moneys due or to become due hereunder without consent of the Owner. In case the Contractor assigns all or any part of any moneys due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or become due to the Contractor shall be subject to prior claims of all persons, firms, and corporations of services rendered or materials supplied for the performance of the work called for in this contract.

### 32. Mutual Responsibility of Contractors

If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractors or subcontractors by agreement or arbitration if such other Contractor or subcontractor will so settle. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

### 33. Separate Contract

The Contractor shall coordinate its operations with those of other Contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including its subcontractors, shall keep informed of the progress and the detail work of other Contractors and shall notify the Architect/Engineer immediately of lack of progress or defective workmanship on the part of other Contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by it of the status of the work as being satisfactory for proper coordination with its own work.

### 34. Subcontracting

- (a) The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
- (b) The Contractor shall not award any work to any subcontractor without prior written approval of the Owner, which approval will not be given until the Contractor submits to the Owner a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the Owner may require.
- (c) The Contractor shall be as fully responsible to the Owner for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons employed by it.
- (d) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contract by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.

- (e) Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

35. Architect/Engineer's Authority

The Architect/Engineer shall give all orders and directions contemplated under this contract and specifications, relative to the execution of the work. The Architect/Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decisions of the Architect/Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this contract affected in any manner to any extent by such question.

The Architect/Engineer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this contract and other Contractors performing work for the Owner shall be adjusted and determined by the Architect/Engineer.

36. Stated Allowances

The Contractor shall include in its proposal the cash allowances stated in the Supplemental General Conditions. The Contractor shall purchase the "Allowed Materials" as directed by the Owner on the basis of the lowest and best bid of at least three competitive bids. If the actual price for purchasing the "Allowed Materials" is more or less than the "Cash Allowance," the contract price shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable sections of the Contract Specifications covering this work.

37. Use of Premises and Removal of Debris

The Contractor expressly undertakes at its own expense:

- (a) to take every precaution against injuries to persons or damage to property;
- (b) to store its apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of its work or the work of any other contractors;
- (c) to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- (d) to clean up frequently all refuse, rubbish, scrap materials, and debris caused by its operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;

- (e) before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from its operations, and to put the site in a neat, orderly condition;
- (f) to effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with the consent of the Architect/Engineer, not cut or otherwise alter the work of any other Contractor.

38. Quantities of Estimate

Wherever the estimated quantities or work to be done and materials to be furnished under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the Owner to complete the work contemplated by this contract, and such increase or diminution shall in no way vitiate this contract, not shall any such increase or diminution give cause for claims or liability for damages.

39. Lands and Right-of-Way

Prior to the start of construction, the Owner shall obtain lands and rights-of-way necessary for the carrying out and completion of work to be performed under this contract.

40. General Guaranty

Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the Owner, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of work unless a longer period is specified. The Owner will give notice of unserved defects with reasonable promptness.

41. Conflicting Conditions

Any provisions of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

42. Notice and Service Thereof

Any notice to any Contractor from the Owner relative to any part of this contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to said Contractor at its last given address, or delivered in person to the said Contractor or its authorized representative on the work.



43. Provisions Required by Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

44. Protection of Lives and Health

"The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume No. 75, Saturday, April 17, 1971. Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Contracting Authority may determine to be reasonably necessary."

45. Subcontracts

"The Contractor will insert in any subcontract the Federal Labor Standards Provisions contained herein and such other clauses as the Department of Housing and Urban Development or Montana Department of Commerce may, by instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made."

46. Interest of Members of or Delegate to Congress

No members of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

47. Other Prohibited Interests

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

48. Use and Occupancy Prior to Acceptance by Owner

The Contractor agrees to the use and occupancy of a portion or unit of the project before formal acceptance by the Owner, provided the Owner:

- (a) Secures written consent of the Contractor except in the event, in the opinion of the Architect/Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of such list items or other contract requirements.
- (b) Secures endorsement from the insurance-carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction, or,
- (c) When the notice consists of more than one building, and one of the buildings is occupied, secures permanent firm and extended coverage insurance, including a permit to complete construction. Consent of the surety must also be obtained.
- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, or national origin.

#### 49. Photographs of the Project

If required the Owner, the Contractor shall furnish photographs of the project, in the quantities and as described in the Supplemental General Conditions.

#### 50. Suspension of Work

Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such delay with such time as the Owner may determine will compensate for time lost by such delay with such determination to be set forth in writing.

#### 51. Minimum Wage Rate for Laborers and Mechanics

All laborers and mechanics employed upon the work covered by this Contract shall

be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the Local Public Agency or Public Body for the cashing of the same without cost of expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

52. Underpayments of Wages or Salaries

In case of underpayment of wages by the Contractor or by any subcontractor to laborers or mechanics employed by the Contractor or subcontractor upon the work covered by this Contract, the Local Public Agency or Public Bond in addition to such other rights as may be afforded it under this Contract shall withhold from the Contractor, out of any payments due the Contractor, so much thereof as the Local Public Agency or Public Body may consider necessary to pay such laborers or mechanics the full amount of wages required by this Contract. The amount so withheld may be disbursed by the Local Public Agency or Public Body, for and on account of the Contractor or the subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf to plans, funds, or programs for any type of fringe benefit prescribed in the applicable wage determination.

53. Anticipated Costs of Fringe Benefits

If the Contractor does not make payments to a trustee or other third person, it may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing fringe benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this Contract; Provided, however, the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. A copy of any findings made by the Secretary of Labor in respect to fringe benefits being provided by the Contractor must be submitted to the Local Public Agency or Public Body with the first payroll filed by the Contractor subsequent to receipt of the findings.

54. Overtime Compensation Required by Contract Work Hours and Safety Standards Act (76 Stat. 357-360: Title 40 U.S.C., Sections 327-332)

- (a) Overtime Requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any workweek in which it is employed on such work to work in excess of 8 hours on any calendar day or in excess of 40 hours in such work week unless such laborer or mechanic received compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such work week, as the case may be.
- (b) Violation: Liability for unpaid wages liquidated damages. In the event of any violation of the clause set forth in paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for any unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violations of the clause set forth in paragraph (a), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (a).
- (c) Withholding for liquidated damages. The Local Public Agency or Public Body shall withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in the clause set forth in paragraph (b).
- (d) Subcontract. The Contractor shall insert in any subcontract the clauses set forth in paragraphs (a), (b), and (c) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

55. Employment or Apprentices/Trainees

- a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to its entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (b) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined



by the Secretary of Labor for the classification of work as actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of its program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

- b. Trainees. Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work as actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- c. Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

56. Employment of Certain Persons Prohibited

No person under the age of sixteen years and no person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered in this Contract.

57. Regulations Pursuant to So-Called "Anti-Kickback Act"

The Contractor shall comply with the applicable regulations (a copy of which is attached and herein incorporated by reference) of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 862; Title U.S.C., Section 874; and Title 40 U.S.C., Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and

exemptions from the requirements thereof.

58. Employment of Laborers or Mechanics Not Listed in Aforesaid Wage Determination Decision

Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract will be classified or reclassified conformably to the wage determination by the Local Public Agency of Public Body, and a report of the action taken shall be submitted by the Local Public Agency or Public Body, through the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the Local Public Agency or Public Body shall be referred, through the Secretary of Housing and Urban Development, to the Secretary of Labor for final determination.

59. Fringe Benefits Not Expressed as Hourly Wage Rates

The Local Public Agency or Public Body shall require, whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Contractor is obligated to pay cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Local Public Agency or Public Body, shall be referred, through the Secretary of Housing and Urban Development, to the Secretary of Labor for determination.

60. Posting Wage Determination Decisions and Authorized Wage Deductions

The applicable wage poster of the Secretary of Labor, United States Department of Labor, and the applicable wage determination decisions of said Secretary of Labor with respect to the various classifications of laborers and mechanics employed and to be employed upon the work covered by this Contract, and a statement showing all deductions, if any, in accordance with the provisions of this Contract, to be made from wages actually earned by persons so employed or to be employed under such classifications, shall be posted at appropriate conspicuous points at the site of the work.

61. Complaints, Proceedings, or Testimony by Employees

No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

62. Claims and Disputes Pertaining to Wage Rates

Claims and disputes pertaining to wage rates or to classifications of laborers and mechanics employed upon the work covered by this Contract shall be promptly reported by the Contractor in writing to the Local Public Agency or Public Body for

referral by the latter through the Secretary of Housing and Urban Development to the Secretary of Labor, United States Department of Labor, whose decision shall be final with respect thereto.

63. Questions Concerning Certain Federal Statutes and Regulations

All questions arising under this Contract which relate to the application or interpretation of (a) the aforesaid Anti-Kickback Act, (b) the Contract Work Hours and Safety Standards Act, (c) the aforesaid Davis-Bacon Act, (d) the regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to said Acts, or (e) the labor standards provisions of any other pertinent Federal statute, shall be referred through the Local Public Agency or Public Body and the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this Contract.

64. Payrolls and Basic Payroll Records of Contractor and Subcontractors

The Contractor and each subcontractor shall prepare the payrolls on forms satisfactory to and in accordance with instructions to be furnished by the Local Public Agency or Public Body. The Contractor shall submit weekly to the Local Public Agency or Public Body two certified copies of all payrolls of the Contractor and of the subcontractors, it being understood that the Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the Contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this Contract shall be maintained during the course of the work and preserved for a period of 3 years thereafter. Such payrolls and basic payroll records shall contain the name and address of each such employee, the correct classification, rate of pay (including rates of contributions or costs anticipated, of the types described in Section 1(b)(2) of the Davis-Bacon Act, daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, whenever the Secretary of Labor has found under Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor or subcontractor shall maintain records which shows that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Contractor and each subcontractor shall make its employment records with respect to persons employed by it upon the work covered by this Contract available for inspection by authorized representatives of the Secretary of Housing and Urban Development, the Montana Department of Commerce, the Local Public Agency or Public Body, and the United States Department of Labor. Such representatives shall be permitted to interview employees of the Contractor or of any subcontractor during working hours on the job.

65. Specific Coverage of Certain Types of Work by Employees

The transporting of materials and supplies to or from the site of the Project or

Program to which this Contract pertains by the employees of the Contractor or of any subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the Project or Program to which this Contract pertains by persons employed by the Contractor or by any subcontractor, shall, for the purposes of this Contract, and without limiting the generality of the foregoing provisions of this Contract, be deemed to be work to which these Federal Labor Standards Provisions are applicable.

66. Ineligible Subcontractors

The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the Local Public Agency's Public Body's prior written approval of the subcontractor. The Local Public Agency or Public Body will not approve any subcontractor for work by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by the Secretary of Labor, United States Department of Labor or the Secretary of Housing and Urban Development, to receive an award of such subcontract.

67. Provisions to be Included in Certain Subcontracts

The Contractor shall include or cause to be included in each subcontract covering any of the work covered by this Contract, provisions which are consistent with these Federal Labor Standards Provisions and also a clause requiring the subcontractors to include such provisions in any lower tier subcontracts which they may enter into, together with a clause requiring such insertion in any further subcontracts that may in turn be made.

68. Breach of Foregoing Federal Labor Standards Provisions

In addition to the causes for termination of this Contract as herein elsewhere set forth, the Local Public Agency or Public Body reserves the right to terminate this Contract if the Contractor or any subcontractor whose subcontract covers any of the work covered by this Contract shall breach any of these Federal Labor Standards Provisions. A breach of these Federal Labor Standards Provisions may also be grounds for debarment as provided by the applicable regulations issued by the Secretary of Labor, United States Department of Labor.

69. Employment Practices

The Contractor (1) shall, to the greatest extent practicable, follow hiring and employment practices for work on the project which will provide new job opportunities for the unemployed and underemployed, and (2) shall insert or cause to be inserted the same provision in each construction subcontract.

70. Contract Termination; Debarment

A breach of Section 45 and the Federal Labor Standards Provisions, may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.



Exhibit VIII-F

SUPPLEMENTAL GENERAL CONDITIONS

1. Enumeration of Plans, Specifications and Addenda
2. Stated Allowances
3. Special Hazards
4. Public Liability and Property Damage Insurance
5. Photographs of Project
6. Schedule of Minimum Hourly Wage Rates
7. Builder's Risk Insurance
8. Certification of Compliance with Air and Water Acts
9. Flood Disaster Protection
10. Special Equal Opportunity Provisions
  - A. Equal Employment Opportunity
  - B. Civil Rights Act of 1964
  - C. Section 109 of the Housing and Community Development Act of 1974
  - D. Section 3 of the Housing and Community Development Act of 1968
  - E. Section 504 of the National Rehabilitation Act of 1973
  - F. Section 503 of the National Rehabilitation Act of 1973
11. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention
12. The Architectural Barriers Act
13. Wage Rate Determination

## 1. ENUMERATION OF PLANS, SPECIFICATIONS AND ADDENDA

Following are the Plans, Specifications and Addenda which form a part of this contract, as set forth in Paragraph 1 of the General Conditions, "Contract and Contract Documents":

### DRAWINGS

General Construction: Nos. \_\_\_\_\_  
Heating and Ventilation: Nos. \_\_\_\_\_  
Plumbing: Nos. \_\_\_\_\_  
Electrical Nos. \_\_\_\_\_  
Other \_\_\_\_\_  
\_\_\_\_\_ Nos. \_\_\_\_\_

### SPECIFICATIONS:

General Construction: Page \_\_\_\_\_ to \_\_\_\_\_, inclusive  
Heating and Ventilation Page \_\_\_\_\_ to \_\_\_\_\_, inclusive  
Plumbing: Page \_\_\_\_\_ to \_\_\_\_\_, inclusive  
Electrical Page \_\_\_\_\_ to \_\_\_\_\_, inclusive  
Other: \_\_\_\_\_  
\_\_\_\_\_ Page \_\_\_\_\_ to \_\_\_\_\_, inclusive

### ADDENDA

No. _____	Date _____	No. _____	Date _____
No. _____	Date _____	No. _____	Date _____

## 2. STATE ALLOWANCES

Pursuant to paragraph 36 of the General Conditions, the contract shall include the following cash allowances in the proposal:

(a) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_  
(b) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_  
(c) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_  
(d) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_

3. SPECIAL HAZARDS

The Contractor's and its Subcontractor's Public Liability and Property Damage Insurance shall provide adequate protection against the following special hazards:

4. CONTRACTOR'S AND SUBCONTRACTOR'S PUBLIC LIABILITY, VEHICLE LIABILITY AND PROPERTY DAMAGE INSURANCE

As required under paragraph 28 of the General Conditions, the Contractor's Public Liability Insurance and Vehicle Liability Insurance shall be in an amount not less than \$\_\_\_\_\_ for injuries, including accidental death, to any person, and subject to the same limit for each person, in an amount not less than \$\_\_\_\_\_ on account of one accident, and Contractor's Property Damage Insurance in an amount not less than \$\_\_\_\_\_.

The Contractor shall either (1) require each of its subcontractors to procure and to maintain during the life of its subcontract, Subcontractor's Public Liability and Property Damage Insurance of the type and in the same amounts as specified in the preceding paragraph, or (2) insure the activities of its subcontractors in its own policy.

5. PHOTOGRAPHS OF PROJECT

As provided in paragraph 50 of the General Conditions, the Contractor will furnish photographs in the number, type, and stage as enumerated below:

6. SCHEDULE OF OCCUPATIONAL CLASSIFICATIONS AND MINIMUM HOURLY WAGE RATES AS REQUIRED UNDER PARAGRAPH 52 OF THE GENERAL CONDITIONS

Given on Pages \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

7. BUILDER'S RISK INSURANCE

As provided in the General Conditions, paragraph 28(e), the Contractor will/will not maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portions of the project for the benefit of the Owner, the Contractor, and all subcontractors, as their interest may appear.

8. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(Applicable to Federally assisted construction contracts and related subcontracts exceeding \$100,000.)

Compliance with Air and Water Acts

During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR 15, as amended.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- (1) A stipulation by the Contractor or subcontractor, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- (2) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- (4) Agreement by the Contractor that it will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

#### 9. FLOOD DISASTER PROTECTION

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). The use of any assistance provided under this contract for acquisition or construction purposes as defined under section 3(a) of said Act, for use in an area identified by the Secretary as having special flood hazards which is located in a community participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

#### 10. SPECIAL EQUAL OPPORTUNITY PROVISIONS

- A. Equal Employment Opportunity. During the performance of this contract, the Contractor agrees as follows:
  - (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirma-

tive action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless

exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that each provision will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

- B. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- C. Section 109 of the Housing and Community Development Act of 1974.
  - (1) No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
- D. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities
  - (1) The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
  - (2) The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to that execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.



- (3) The contractor will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of its commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- (4) The contractor will include this Section 3 Clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- (5) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

E. Sections 503 and 504 of the Vocational Rehabilitation Act of 1973. The Contractor will comply with the following:

No otherwise qualified handicapped individual in the United States, defined in Section 7(7), shall solely by reason of handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Any contract in excess of \$2,500 entered into for the procurement of personal property and nonpersonal services (including construction) shall contain a provision requiring that, in employing persons to carry out such contract the party contracting shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in section 7(7). The provisions of this section

shall apply to any subcontract in excess of \$2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction).

11. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION

A. Lead-Based Paint Hazards

(Applicable to contracts for construction or rehabilitation of residential structures)

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR 35. The Contractor and Subcontractors shall comply with the provisions for elimination of lead-based paint hazards under Subpart B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.24(f) thereof.

B. Use of Explosives (Modify as Required)

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, State and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel, or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least eight (8) hours before blasting is done, close to such property. Any supervision or direction of use of explosives by the Engineer, does not in any way reduce the responsibility of the Contractor or its Surety for damages that may be caused by such use.

C. Danger Signals and Safety Devices (Modify as Required)

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. It shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.



12. THE ARCHITECTURAL BARRIERS ACT

All design specifications for the construction of any building shall provide access to the physically handicapped in accordance with the Architectural Barriers Act of 1968.

13. WAGE RATE DETERMINATION

Appropriate wage rates shall be inserted here.



Exhibit VIII-G

BID FOR LUMP SUM CONTRACTS

Place \_\_\_\_\_  
Date \_\_\_\_\_  
Project No. \_\_\_\_\_

Proposal of \_\_\_\_\_ (hereinafter called Bidder), a  
corporation organized under the laws of the State of \_\_\_\_\_ /a partnership/  
an individual doing business as \_\_\_\_\_ (strike out inapplicable references).

To the \_\_\_\_\_  
\_\_\_\_\_ (hereinafter called Owner).

Gentlemen:

The Bidder, in compliance with you invitation for bids for the construction of a

\_\_\_\_\_ having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies; and to construct the project in accordance with the Contract Documents, within the time set forth therein, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the Contract Documents, of which this proposal is a part.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within \_\_\_\_\_ consecutive calendar days thereafter as stipulated in the specifications. Bidder further agrees to pay as liquidated damages, the sum of \$ \_\_\_\_\_ for each consecutive calendar day thereafter as hereinafter provided in the GENERAL CONDITIONS.

Bidder acknowledges receipt of the following addenda:

\_\_\_\_\_  
\_\_\_\_\_

BASE PROPOSAL: Bidder agrees to perform all of the \_\_\_\_\_  
\_\_\_\_\_ work described in the specifications and shown  
on the plans for the sum of \_\_\_\_\_ (\$ \_\_\_\_\_).  
(Amount shall be shown in both words and figures. In case of discrepancy, the amount shown  
in words will govern.)

ALTERNATE PROPOSALS:

Alternative No. 1: \_\_\_\_\_  
Deduct the sum of \_\_\_\_\_ (\$ \_\_\_\_\_)  
Alternative No. 2: \_\_\_\_\_  
Deduct the sum of \_\_\_\_\_ (\$ \_\_\_\_\_)

(over)

UNIT PRICES:

For changing quantities of work items from those indicated by the contract drawings upon written instructions from the architect/engineer, the following unit prices shall prevail:

1. \_\_\_\_\_ \$ \_\_\_\_\_
2. \_\_\_\_\_ \$ \_\_\_\_\_
3. \_\_\_\_\_ \$ \_\_\_\_\_

The above unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for. Changes shall be processed in accordance with the GENERAL CONDITIONS.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 calendar days after the scheduled closing time for receiving bids.

Upon receipt of Owner's written acceptance of this bid, Bidder will execute the formal contract attached within 10 days and deliver a Surety Bond or Bonds as required by the GENERAL CONDITIONS.

The bid security attached in the sum of \_\_\_\_\_

\_\_\_\_\_ (\$ \_\_\_\_\_) is to become the property of the Owner in the event the contract and bond are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the Owner caused thereby.

Respectfully submitted:

By: \_\_\_\_\_

\_\_\_\_\_  
Title

(SEAL - If bid is by a corporation)

\_\_\_\_\_  
Address  
  
\_\_\_\_\_

Exhibit VIII-H

BID FOR UNIT PRICE CONTRACTS

Place \_\_\_\_\_

Date \_\_\_\_\_

Project No. \_\_\_\_\_

Proposal of \_\_\_\_\_ (hereinafter called Bidder)  
a corporation, organized and existing under the laws of the State of \_\_\_\_\_ /a partner-  
ship/an individual doing business as \_\_\_\_\_ (cross out non-applicable  
references).

To the \_\_\_\_\_

\_\_\_\_\_ (hereinafter called Owner).

Gentlemen:

The Bidder, in compliance with the invitation for bids for the construction of a

\_\_\_\_\_

having examined the plans and specifications with related documents and the site of the  
proposed work, and being familiar with all of the conditions surrounding the construction  
of the project including the availability of materials and labor, hereby proposes to furnish  
all labor, materials, and supplies, and to construct the project in accordance with the  
contract documents, within the time set forth therein, and at the prices stated below.  
These prices are to cover all expenses incurred in performing the work required under the  
contract documents, of which this proposal is a part.

Bidder hereby agrees to commence work under this contract on or before a date to be  
specified in a written "Notice to Proceed" of the Owner and to fully complete the project  
within \_\_\_\_\_ consecutive calendar days thereafter as stipulated in the specifi-  
cations. Bidder further agrees to pay as liquidated damages, the sum of \$ \_\_\_\_\_  
for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

Bidder acknowledges receipt of the following addenda:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(over)

Bidder agrees to perform all the \_\_\_\_\_ work described in the specifications and shown on the plans, for the following unit prices:

Item No.	Est. Qty.	Description	Unit Price (each)	Total Price
1	_____	_____	Dollars & Cents (\$ _____)	Dollars & Cents (\$ _____)
2	_____	_____	Dollars & Cents (\$ _____)	Dollars & Cents (\$ _____)
3	_____	_____	Dollars & Cents (\$ _____)	Dollars & Cents (\$ _____)
TOTAL OF BID			\$ _____	_____

(Amounts are to be shown in both words and figures. In case of discrepancy, the amount shown in words will govern.)

The above unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 days after the scheduled closing time for receiving bids.

Upon receipt of written notice of the acceptance of this bid, bidder will execute the formal contract attached within 10 days and deliver a Surety Bond or Bonds as required under the GENERAL CONDITIONS. The bid security attached in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) is to become the property of the Owner in the event the contract and bond are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the Owner caused thereby.

Respectfully submitted,

By \_\_\_\_\_

(SEAL - If bid is by a corporation)

\_\_\_\_\_ Title

\_\_\_\_\_ Address

Exhibit VIII-I

BID BOND

BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_  
\_\_\_\_\_ as Principal, and \_\_\_\_\_  
as Surety, are hereby held and firmly bound unto \_\_\_\_\_ as Owner  
in the penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for  
the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves,  
our heirs, executors, administrators, successors and assigns. Signed this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_.

The condition of the above obligation is such that whereas the Principal has submitted  
to \_\_\_\_\_ a certain bid, attached hereto and hereby made  
a part hereof to enter into a contract in writing, for the \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW THEREFORE,

- (a) If said Bid shall be rejected, or in the alternate,
- (b) If said Bid shall be accepted and the Principal shall execute and deliver a contract  
in the Form of Contract attached hereto (properly completed in accordance with said Bid)  
and shall furnish a bond for his faithful performance of said contract, and for the payment  
of all persons performing labor or furnishing materials in connection therewith, and  
shall in all other respects perform the agreement created by the acceptance of said Bid,

then this obligation shall be void, otherwise the same shall remain in force and effect; it  
being expressly understood and agreed that the liability of the Surety for any and all claims  
hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of  
said Surety and its bond shall be in no way impaired or affected by any extension of the time  
within which the Owner may accept such Bid; and said Surety does hereby waive notice of any  
such extension.

IN WITNESS THEREOF, the Principal and the Surety have hereunto set their hands and seals,  
and such of them as are corporations have caused their corporate seals to be hereto affixed  
and these presents to be signed by their proper officers, the day and year first set forth  
above.

\_\_\_\_\_  
Principal (L.S.)

\_\_\_\_\_  
Surety

(Seal)

By: \_\_\_\_\_





Exhibit VIII-J

PERFORMANCE AND PAYMENT BONDING REQUIREMENTS

(per OMB Circular A-102, Attachment B)

Except as otherwise may be required by State law, the following minimum requirements apply to any contracts exceeding \$100,000 in total value.

- (a) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.
- (b) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(Address)

(Recipient's Address)

Dollars \$

Dollars

in lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, successors, and assigns, jointly and severally, firmly in these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

(Project Name)

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counter-  
(Number)  
parts, each one of which shall be deemed an original, this the \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_.

ATTEST:

\_\_\_\_\_  
(Principal)  
\_\_\_\_\_  
(Principal Secretary) By \_\_\_\_\_ (s)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
(Address) \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
(Surety)  
\_\_\_\_\_  
(Witness as to Surety) By \_\_\_\_\_  
(Attorney in Fact)  
\_\_\_\_\_  
(Address) \_\_\_\_\_  
(Address) \_\_\_\_\_

NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

# PAYMENT BOND

(Name of Contractor or Company)

(Address)

a \_\_\_\_\_, hereinafter called Principal,  
(Corporation/Partnership)

and \_\_\_\_\_  
(Name or Surety Company)

(Address)

hereinafter called Surety, are held and firmly bound unto

(Name of Recipient)

(Recipient's Address)

hereinafter called OWNER, in the penal sum of \$ \_\_\_\_\_ Dollars,  
\$ \_\_\_\_\_ in lawful money of the United States, for the payment of which  
sum well and truly to be made, we bind ourselves, successors, and assigns,  
jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

(Project Name)

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUB-CONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUB-CONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counter-  
(Number)  
parts, each one of which shall be deemed an original, this the \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_.

ATTEST:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal Secretary)

By \_\_\_\_\_ (s)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

ATTEST:

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Witness as to Surety)

By \_\_\_\_\_  
(Attorney in Fact)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.



## CONTRACTOR CERTIFICATIONS

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	
CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY	
INSTRUCTIONS	
<p>This certification is required pursuant to Executive Order 11246 (30 F. R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.</p> <p>Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.</p>	
CERTIFICATION BY BIDDER	
NAME AND ADDRESS OF BIDDER (Include ZIP Code)	
1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause. <input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Compliance reports were required to be filed in connection with such contract or subcontract. <input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Bidder has filed all compliance reports due under applicable instructions, including SF-100. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> None Required	
4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended? <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAME AND TITLE OF SIGNER (Please type)	
SIGNATURE	DATE

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

CONTRACTOR'S CERTIFICATION  
CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

TO (Appropriate Recipient):	DATE
c/o	PROJECT NUMBER (If any)
	PROJECT NAME

1. The undersigned, having executed a contract with \_\_\_\_\_  
\_\_\_\_\_ for the construction of the above-identified project, acknowledges that:

- (a) The Labor Standards provisions are included in the aforesaid contract;
- (b) Correction of any infractions of the aforesaid conditions, including infractions by any of his subcontractors and any lower tier subcontractors, is his responsibility;

2. He certifies that:

- (a) Neither he nor any firm, partnership or association in which he has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended (40 U.S.C. 276a-2(a)).
- (b) No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

3. He agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract, including those executed by his subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

4. He certifies that:

- (a) The legal name and the business address of the undersigned are:

(b) The undersigned is:

(1) A SINGLE PROPRIETORSHIP	(3) A CORPORATION ORGANIZED IN THE STATE OF
(2) A PARTNERSHIP	(4) OTHER ORGANIZATION (Describe)

(c) The name, title and address of the owner, partners or officers of the undersigned are:

NAME	TITLE	ADDRESS

HUD-1471 (6-75)



(d) The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest are (If none, so state):

NAME	ADDRESS	NATURE OF INTEREST

(e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are (If none, so state):

NAME	ADDRESS	TRADE CLASSIFICATION

Date \_\_\_\_\_

\_\_\_\_\_  
(Contractor)

By \_\_\_\_\_

**WARNING**

U.S. Criminal Code, Section 1010, Title 18, U.S.C., provides in part: "Whoever, . . . makes, passes, utters or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

CERTIFICATION OF PROPOSED CONTRACTOR REGARDING  
SECTION 3 AND SEGREGATED FACILITIES

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Project Name and Number

The undersigned hereby certifies that:

- (a) Section 3 provisions are included in the Contract.
- (b) A written Section 3 plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$10,000).
- (c) No segregated facilities will be maintained as required by Title VI of the Civil Rights Act of 1964.

\_\_\_\_\_  
Name and Title of Signer (Type or Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

State of \_\_\_\_\_)

County of \_\_\_\_\_) ss.

\_\_\_\_\_, being first duly sworn, deposes and says  
that:

(1) It is \_\_\_\_\_ of \_\_\_\_\_,  
the Bidder that has submitted the attached Bid;

(2) It is fully informed respecting the preparation and contents of  
the attached Bid and of all pertinent circumstances respecting such  
Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners,  
agents, representatives, employees or parties in interest, including  
this affiant, has in any way colluded, conspired, connived or agreed,  
directly or indirectly with another Bidder, firm or person to submit  
a collusive or sham Bid in connection with the Contract for which the  
attached Bid has been submitted or to refrain from bidding in connection  
with such Contract, or has in any manner, directly or indirectly, sought  
by agreement or collusion or communication or conference with any other  
Bidder, firm or person to fix the price or prices in the attached Bid  
or of any other Bidder, or to fix an overhead, profit or cost element  
of the Bid price or the Bid price of any other Bidder, or to secure  
through any collusion, conspiracy, connivance or unlawful agreement  
any advantage against the \_\_\_\_\_ (Local Public Agency)  
or any person interested in the proposed Contract; and

(5) The price or prices quoted in the attached Bid are fair and proper  
and are not tainted by any collusion, conspiracy, connivance or unlawful  
agreement on the part of the Bidder or any of its agents, representatives,  
owners, employees, or parties in interest, including this affiant.

(Signed) \_\_\_\_\_

\_\_\_\_\_  
Title

Subscribed and sworn to me this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

By: \_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.



**Exhibit VIII-L  
CONTRACT**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_ (Corporate Name of Owner) \_\_\_\_\_, herein called "Owner," acting herein through its \_\_\_\_\_ (Title of Authorized Official) \_\_\_\_\_, and a corporation/a partnership/an individual doing business as \_\_\_\_\_ (Strike Out Inapplicable Terms), of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, hereinafter called "Contractor."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete the construction described as follows:

hereinafter called the project, for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and all extra work in connection therewith, under the terms as stated in the General and Supplemental Conditions of the Contract; and at -- (its or their) own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, the General Conditions, and Supplemental General Conditions of the Contract, the plans which include all maps, plats, blue prints, and other drawings and printed or written explanatory matter thereof, the specifications and contract documents therefor as prepared by \_\_\_\_\_, herein entitled the Architect/Engineer, and as enumerated in Paragraph 1 of the Supplemental General Conditions, all of which are made a part hereof and collectively evidence and constitute the Contract.

The Contractor hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within \_\_\_\_\_ consecutive calendar days thereafter. The Contractor further agrees to pay, as liquidated damages, the sum of \$\_\_\_\_\_ for each consecutive calendar day thereafter as hereinafter provided in Paragraph 19 of the General Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in Paragraph 25, "Payments to Contractor," of the General Conditions.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original in the year and day first above mentioned.

(SEAL)  
ATTEST:

\_\_\_\_\_  
(Owner)

By \_\_\_\_\_

\_\_\_\_\_  
(Secretary)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Title)

(SEAL)  
ATTEST:

\_\_\_\_\_  
(Contractor)

By \_\_\_\_\_

\_\_\_\_\_  
(Secretary)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

Exhibit VIII-M

NOTICE OF CONTRACT AWARD AND PRECONSTRUCTION CONFERENCE

(Type on letterhead of grantee)

Date

Montana Department of Commerce  
Community Development Division  
Cogswell Building, Room C-211  
Capitol Station  
Helena, Montana 59620

This is to inform you that \_\_\_\_\_ (name of company/I.D. number)  
at \_\_\_\_\_ (address) \_\_\_\_\_, \_\_\_\_\_ (phone) \_\_\_\_\_, has been awarded a  
contract -- (contract #) -- to (brief description of work) in the  
(name of grantee: City, Town or County of \_\_\_\_\_). The number of  
applicable wage decision is \_\_\_\_\_. The contract is for  
(amount). The estimated start of construction is (date). Contract  
completion is estimated to be approximately (date).

A Preconstruction Conference will be held concerning this project at  
(time) on (date) at (address).

Sincerely,

(Signature) \_\_\_\_\_  
(typed name)

Labor Standards Coordinator or  
Project Manager  
(\_\_\_\_\_ CDBG Project)  
(\_\_\_\_\_, Montana Zip \_\_\_\_\_)





Exhibit VIII- N  
MONTHLY EMPLOYMENT UTILIZATION REPORT

STANDARD FORM - 257 (August, 1976) As prescribed by the Dept. of Labor		MONTHLY EMPLOYMENT UTILIZATION REPORT		Reporting Period (Month, Year)				
To: (Name and location of Compliance Agency)			From: (Name and location of Contractor)					
Company Name (10)	Trade	Work Hours of Employment				% min. w/h of Total	Total # minority Employees	Total Number of Employees
		Classifi- cation	Total	*His- panic	*Amer. Indian			
		Craftsman						
		Apprentice						
		Trainee						
		Craftsman						
		Apprentice						
		Trainee						
		Craftsman						
		Apprentice						
		Trainee						
		Craftsman						
		Apprentice						
		Trainee						
		Craftsman						
		Apprentice						
		Trainee						
		Craftsman						
		Apprentice						
		Trainee						
		Craftsman						
		Apprentice						
		Trainee						

Company Official's Signature & Title	Date Signed	Telephone (include area code)
--------------------------------------	-------------	-------------------------------



# **Chapter IX**

## **Housing Rehabilitation Projects**



## CHAPTER IX

### HOUSING REHABILITATION PROJECTS

#### OVERVIEW

Of all CDBG supported activities, housing rehabilitation projects place the greatest administrative burden on the local grantee. This is a result of the number of ultimate beneficiaries (i.e. the housing occupants who actually receive rehabilitation assistance) and the specific characteristics of each case. Additionally, the local CDBG office remains constantly involved in the process from the determination of eligibility requirements to selection of recipients to the final inspection of rehabilitation work performed by contractors.

The extent of administrative involvement in a housing rehabilitation project also leaves the administering unit open to criticism or questioning from assistance recipients, non-recipients, and contractors performing the rehabilitation work. It is important, therefore, to establish and publicize the procedures by which the local project will be conducted. This Chapter examines the major elements of a successful rehabilitation project:

- establish management system;
- establish local project guidelines;
- select assistance recipients;
- determine the scope of rehabilitation;
- contract for rehabilitation construction;
- inspect the rehabilitation work; and
- maintain records.

#### APPLICABLE LAWS

Housing rehabilitation projects are subject to all applicable State and federal laws and regulations. All of the preceeding chapters of this Manual contain requirements which grantees must

comply with. The following sections of this chapter provide additional guidance and discuss additional federal and State requirements which must be complied with.

## LOCAL GRANTEE RESPONSIBILITIES

### Step 1 -- Establish Management System

Before proceeding with any rehabilitation activity, the grantee should decide how project management will be carried out. Typically, responsibility is divided between several groups. Although not all rehabilitation projects are managed in this manner, the governing body will usually establish a loan review committee to work with the local CDBG staff or third party contractor who will be responsible for administering the project.

Staff (or contractor) roles often include accepting applications from potential recipients, verifying income, determining that the structure can be rehabilitated to all required codes, performing day-to-day work with recipients and contractors, and coordinating with the loan review committee, with the clerk on financial management, and with the governing body and DOC.

The loan review committee works with the staff in developing project guidelines, and makes the determinations regarding which applicants are awarded assistance. Appointment of a loan review committee must be done by authorizing ordinance or resolution by the grantee. The governing body should include representation on the committee by low and moderate income persons, minorities, women, elderly and the handicapped.

The guidelines should be substantially in accordance with the project design and mechanisms as proposed in the grantee's application to DOC for CDBG assistance. The local rehabilitation guidelines must be formally adopted by the local governing body, and the grantee must

send a copy to the CDBG liaison for review and retention in the DOC file on the project. Similarly, any subsequent modifications to the project guidelines must be submitted to DOC.

Exhibit IX-A, CDBG Housing Rehabilitation Issues, contains a listing of major considerations for project design. While this exhibit contains issues for consideration, be sure to avoid designing guidelines which conflict with project design as represented in the application to DOC. The final form of the local guidelines will vary according to design considerations. For example, guidelines for a project allowing rehabilitation of owner-occupied units by deferred loans only will vary considerably from those for a more complex project allowing several types of loans and grants for both owner-and renter-occupied units. Another critical decision is whether rehabilitation contracts will be between the homeowner and the contractor, as is most commonly done, or whether the grantee will serve as the general contractor. As discussed in detail in Step 5, it becomes more complex if the grantee serves as the general contractor because contracts are then "public" and additional requirements apply.

When developing guidelines, it is recommended that the grantee take into consideration the following:

- design as proposed in the application to DOC;
- considerations included in Exhibit IX-A;
- sample guidelines provided as Exhibit IX-B; and
- guidelines being used by other current or former CDBG projects throughout the State.

An additional consideration when establishing the management system is compliance with federal and State requirements and maintaining records to demonstrate compliance. For example, civil rights requirements prohibit discrimination in housing opportunities. Therefore, Step 7 -- Maintain Records, of this chapter on housing rehabilitation, requires grantees to maintain records on benefits to low and moderate income and minority persons. Other examples of

requirements discussed later in this chapter, and corresponding documentation required, pertain to efforts to use minority and local contractors, and verifying eligibility. Finally, complying with very detailed requirements of acquisition or relocation, if that is an element of the local housing rehabilitation project, would involve the procedures and forms explained in Chapter VII.

### Step 2 -- Establishing Local Project Guidelines

Typically, the loan review committee and staff formulate a set of local rehabilitation project guidelines which address many of the key questions that would eventually arise during the conduct of the project. Having this information at the start lessens any possible criticism of the program as being arbitrary and apprises potential assistance recipients of their chances for receiving assistance as well as the amount of the assistance.

The local project guidelines should contain at the least, the following elements:

- project purpose - a general statement outlining the reasons why the locality has elected to establish a rehabilitation project;
- designated authority - establishes the public agency or third party contractor who will be responsible for administering the local project and outlines the administrator's responsibilities and the loan review committee's responsibilities;
- recipient eligibility requirements - establishes thresholds for participation in the program including income limits and geographic boundaries if the project is targeted to specific neighborhoods;
- allowable rehabilitation expenses - outlines the range of housing repairs and/or improvements for which CDBG funds may be used. The range of allowable expenses may be written directly into the guidelines or may be referenced;



- property standards - states the standards that must be achieved as a result of any CDBG assisted rehabilitation effort. As required by the 1983 Montana CDBG Program Description, dated May, 1983, as well as the contract between the grantee and DOC:

"Rehabilitation" shall include using CDBG funds to make repairs to substandard residential structures to make them meet or exceed requirements contained in current editions of the following:

- HUD Section 8 Housing Standards
- HUD Cost-Effective Energy Conservation Standards (CEEUS)
- National Electrical Code, as amended
- Uniform Plumbing Code, as amended
- Uniform Mechanical Code
- Uniform Building Code (where rehabilitation involves structures with five or more units, or any commercial buildings) and
- any locally adopted codes

A copy of the Section 8 Standards and CEEUS are included in the Requirements Notebook.

- maximum assistance amounts -- establishes the maximum amount any single household may receive (generally \$10,000 or \$15,000) and describes other rehabilitation dollars that may be leveraged with CDBG funds;
- assistance options -- describes the range of assistance that can be provided with CDBG dollars including grants, loans, loan guarantees, or interest subsidies;
- recipient application procedures -- outlines the process by which the local CDBG office will receive applications for assistance and criteria by which recipients will be selected;

- security requirements -- presents options by which the local CDBG office secures the CDBG assistance if it is provided as a direct loan or loan guarantee;
- use of contractors -- provides options (e.g. selecting a general contractor, homeowner as general contractor, or self-help) and guidelines for bidding, contract qualifications, the contract document, and method of payment;
- licensing requirements -- The Program Description requires that:

All electrical and/or plumbing work not done by the owner of the structure must be done only by electricians and/or plumbers licensed by the Montana Department of Commerce. A current listing of licensed individuals is available from the Professional and Occupational Licensing Division of the Montana Department of Commerce.

In addition, all other applicable State laws governing licensing must be followed.

- permit requirements -- in addition to all other permits as may be required by State statute or local requirements, the 1983 Program Description, page 42, further requires that:

Permits must be obtained from the Building Codes Division of the Montana Department of Administration, for all electrical and/or plumbing work undertaken with CDBG funds unless the grantee has been certified by Division to enforce the codes cited above. In such cases permits will be obtained locally.

Permits must be secured whether the work is done by contractor or by homeowner, if the local project permits homeowner work.

- inspection procedures -- establishes the local CDBG office's responsibility for periodic progress inspections and final inspection. In addition, for plumbing and/or electrical work, the Program Description requires that:

Grantees will be responsible for assuring that such work is inspected by proper authorities. Options to provide code inspection may include interlocal agreements with governments with existing building departments, arrangements with the Building Codes Division of the Montana Department of Administration, or by contracting with qualified, private sector persons.

- other project considerations -- includes procedures for amending or waiving the guidelines, any extraordinary authorities given to the local CDBG office (e.g. authority to make emergency grants where there is an immediate danger to the health and safety of an occupant), and instances that represent a conflict of interest related either to assistance recipients or the awarding of rehabilitation contracts.

### Step 3 -- Select Assistance Recipients

The grantee is responsible for assuring that all potential assistance recipients are informed of the availability of the project. This can be done through advertisements, news articles in the local papers, public service announcements on local radio, door-to-door visits, and/or posting of announcements in public buildings or places frequented by potential recipients (e.g. a senior citizens' center). In some instances, extraordinary measures may be required. For example, in one Colorado community the local rehabilitation agency staff met with the ministers of the local churches who agreed to publicize the project during Sunday services.

When selecting assistance recipients it is important for the grantee to comply with federal and State civil rights requirements which prohibit discrimination and encourage fair housing practices. This is discussed in greater detail in the "general project benefits" and "fair housing" sections of Chapter V.

Regardless of the method of selecting recipients, first-come-first-serve or through periodic competitions, each potential recipient must be screened for eligibility. This can be done through a household survey which examines family composition, income, employment, and length of occupancy. (A sample family survey instrument is provided as Exhibit IX-C.)

Following the household survey, all information related to employment, income, expenses, and other assets must be verified. This information can be obtained from a number of sources, including:

- income:    employer verification  
              tax returns  
              paycheck returns  
              stubs from pension, social security, etc.
- assets:    bank statements or passbooks  
              county assessor's records  
              household inspection
- expenses: cancelled checks for
  - mortgage
  - utilities
  - credit payments
  - taxes
  - insurancemortgage bank statements

(Sample forms for verification of employment and verification of bank accounts are presented as Exhibits IX-D and IX-E.) The local rehabilitation staff can perform this function; the Loan Review Committee members do not need to know the incomes. All financial information required for screening potential recipients is confidential and should be treated as such by the local CDBG rehabilitation office. The only

exceptions to this rule are State and federal project monitors who may require a review of the files to determine whether the grantee is providing project benefits as outlined in the grant application.

For first-come-first-serve projects, once information on the potential recipient is collected and verified and the applicant is determined to be eligible, the local project official can proceed with the work write-up and estimates.

If the project is geared toward a periodic competition among potential recipients, the local established selection criteria is applied to the information available on each applicant. Criteria can be based on the extent to which the applicant is below the established income limits or preference may be given based on some characteristics of the need of household, such as elderly, handicapped, or single head of household with dependent children.

In either case, the local CDBG office should provide all applicants with a Notice of Disposition (Exhibit IX-F) indicating that assistance will be provided or stating the reasons why the applicant was not accepted.

#### Step 4 -- Prepare Work Write-Ups and Cost Estimates

An inspection of the property must be conducted to determine the specific items to be repaired or replaced and to estimate the cost of each item. The write-up must include those items necessary to bring the structure up to local building codes, Section 8 Minimum Property Standards and other standards listed on page IX-5, or standards defined in the local project guidelines, whichever are more stringent.

Procedures required to conduct the initial inspection depend on the level of experience of the inspector. In instances where a trained inspector is available, the write-up may be recorded on a blank form and signed by the inspector. Where the person conducting the inspection is less experienced, the inspection should be based on

a specific checklist of potential deficiencies. The local rehabilitation official who prepares the write-up then checks for each and every potential deficiency. It is highly recommended that if an experienced inspector is not available, training for local agency staff should be included in the administrative budget. (Exhibit IX-G, Residential Inspection Report, consists of a detailed work write-up checklist.)

With the information contained in the work write-up, the local CDBG office must estimate the cost of the rehabilitation activity to determine whether it can be completed within the limits of the maximum assistance available to the household. Again, it is important that the cost estimates be made by persons familiar with material and labor costs in the project area. Inaccurate estimates may discourage potential contractors from competing for the rehabilitation contracts or result in contractors cutting corners to bring the project in under the maximum assistance level. (A sample work write-up and cost estimate is provided as Exhibit IX-H.)

#### Step 5 -- Contract for Rehabilitation Construction

Requirements for contracting for rehabilitation assistance are dictated by whether the contracts are between homeowners and the contractors (see Exhibit IX-A), or whether the grantee opts to serve as general contractor. When the grantee serves as general contractor, contracts are considered "public" and are subject to additional federal and State requirements applying to public contracts. Rehabilitation projects most commonly involve contracts between homeowners and contractors; therefore, the following instructions are based upon that option for contracting.

All rehabilitation contracts under \$10,000 between the homeowner and the contractor must be awarded by competitive negotiation consistent with Montana State Law and procedures outlined in OMB Circular A-102, Attachment O. (See Chapter III for more detailed instructions on competitive negotiation.) Contracts over \$10,000 must be consistent with the competitive processes of State law and A-102, Attachment O. Additionally, the local rehabilitation specialist or

other representative of the grantee should sign as a trustee to the contract. The contract must be awarded to the lowest responsive and responsible submittal. Criteria by which submittals can be judged to be responsive include:

- poor performance on other rehabilitation contracts;
- whether the submittal is substantially below the cost estimates prepared with the work write-up;
- whether the contractor is under penalty from another contract; and/or
- whether the contractor has uncompleted rehabilitation contracts at the time of the submittal.

The local CDBG office should request a determination of contractor eligibility from the CDBG liaison before the contract is executed. Contractor eligibility is discussed in greater detail in Chapter VI, Labor Standards. (Exhibit IX-I contains a sample letter that may be sent to DOC to request a determination of eligibility.) As an alternative to submitting a request each time a contractor is selected, the local CDBG office may wish to send the entire list of approved rehabilitation contractors to DOC for clearance, after which it would only be necessary to obtain clearance for new contractors added to the local list. The DOC notice of eligibility should be maintained in the files.

As was explained under Step 2, Establishing Local Project Guidelines, the grantee is responsible for assuring that all applicable contractor requirements are follows.

Every effort should be made to use minority and local contractors and material suppliers as required by HUD policy and by Section 3 of the HUD Act of 1968, and discussed in greater detail in the "business opportunity" section of Chapter V, and Chapter VIII. (Exhibits V-H and I contain reporting forms which grantees should maintain to demonstrate compliance.) Often small contractors who are unfamiliar with the legal requirements associated with publicly assisted construction shy away from participation. The



local CDBG office should consider providing technical assistance to local contractors to facilitate their participation. This assistance may be in the form of training sessions or briefings about publicly funded contracts and/or elimination of procedural barriers that inhibit small contractor participation.

A potential barrier is cash flow problems sometimes experienced by small contractors. This barrier can be overcome by drawing down the full amount of rehabilitation assistance for each contract after it is approved, and placing it in an escrow account. This system enables the contractor to be paid immediately upon verification of completed work elements. This system is subject to requirements explained in HUD Notice CPD-79-27, Use of Escrow Accounts for Property Rehabilitation Loans or Grants in Block Grant Programs. A copy of the Notice is included in the Requirements Notebook.

The local CDBG rehabilitation office must prepare a standard contract agreement for all rehabilitation activities. Each contract must include the following:

- executed contract agreement;
- copy of the work write-up and contractors response;
- general conditions;
- contractor certifications; and
- any special conditions.

(Exhibit IX-J presents a sample contract package.) All federal requirements related to equal employment and businesses opportunities apply to the rehabilitation contracts. However, Davis-Bacon and other related labor standards requirements are triggered only in those instances where the rehabilitation involves a structure containing eight or more units or where eight or more units are put to bid as a single package.

One additional federal requirement tied to rehabilitation activities is the Lead-Based Paint Poisoning Prevention Act, as amended. A



copy of the Act is included in the Requirements Notebook. The provision is designed to prevent lead-based paint poisoning in residential structures constructed, improved, or rehabilitated with federal funds. The Act and accompanying regulations at Title 24 CFR Part 35 specify that lead-based paint may not be used in federally assisted housing structures and that where lead-based paint currently exists, the paint must be removed and all necessary steps be taken to eliminate the hazard.

The contract conditions should also refer to any State and local permitting and licensing requirements, specify who will pay for the building permits (generally the contractor), and require the contractor to warrant the work for a specific period (e.g. one year) following the final acceptance. Both permitting and licensing requirements were explained previously in greater detail under Step 2.

Although a pre-construction conference is not required, it is recommended that the local agency bring together the homeowner and the contractor to review the work write-up and the method of payment.

#### Step 6 -- Inspect the Rehabilitation Work

The local CDBG rehabilitation office is responsible for periodic and systematic inspections of all rehabilitation work performed by contractors. The inspections should be geared to completion of certain elements of the work write-up such as wiring improvements. For work that will be covered by walls, ceilings, or floors, the inspections should be scheduled before the work is covered over. Deficiencies identified during the inspections should be presented to the contractor for correction before any partial payment is made for that work.

Inspection requirements will vary according to permitting systems established. For example, where plumbing and electrical permits are obtained from the State Building Codes Division, the State inspectors will be involved. Where the grantee is certified to enforce the codes, local permitting and inspection will be done.

If the contractor refuses to make the corrections, the local CDBG office may terminate the contract. In this event, the inspector should assess the work completed to date and escrow an amount of the CDBG funds to compensate the contractor for work that has been satisfactorily completed. The escrow account to the released contractor is paid only after it is determined that the remaining funds are sufficient to cover the costs of a second contractor hired to complete the tasks outlined in the original work write-up.

Documentation of any change orders must be maintained by the local CDBG office in the individual rehabilitation files. Any change order must be reasonable in terms of cost and in proportion to the total contract amount. A notation should be included to explain why it is necessary.

An additional role for the local CDBG staff is to serve as mediator between the owner and the contractor. In the event that the owner indicates dissatisfaction with the contractor's work, the local agency should promptly investigate the complaint and seek a mutually agreeable solution to the complaint.

The local agency may make partial progress payments based on satisfactorily completed work. Partial payments should not exceed 80 percent (or whatever percentage is specified in the contract for rehabilitation) of the total contract amount before final inspection and approval. As with public facilities contracts the remaining funds should be withheld until the final inspection, acceptance of work by the owner and the local CDBG office, and presentation of a clean lien certificate. (Sample Notice of Acceptance and Release of Lien forms are provided as Exhibits IX-K and IX-L.)

Approximately 60 days after the work is completed, the local CDBG staff should make a follow-up visit to the home to determine the owner's satisfaction with the contractor's work and identify any deficiencies that need correction under the contractor's warranty.

### Step 7 -- Maintain Records

Throughout the local project activities the local CDBG office should maintain documentation of a variety of activities, including records of benefits to low and moderate households and protected groups such as women and minorities. (Exhibit IX-M provides a suggested format for tallying benefits by households characteristics.)

The grantee will be responsible for the following documentation and data related format to the local rehabilitation program.

General documentation should include at least the following:

- rehabilitation guidelines and council resolution of adoption;
- copies of all applications;
- notices of rejection and reasons;
- data on benefits to low and moderate income and minority persons (See Exhibit IX-);
- letter of request for contractor eligibility;
- DOC notice of contractor eligibility;
- documentation of any acquisition and/or relocation cases; and
- for contracts of \$10,000 or more, data on utilization of local and minority contractors (see Exhibits V-H and I);

For each rehabilitation job, maintain an individual file containing documentation for at least the following items:

- family survey;
- work write-up and cost estimate;
- executed contract with requirements and attachments;
- electrical and plumbing permit numbers and dates;
- Notice to Proceed;
- site inspection reports;

- requests for partial payment and documentation;
- change order requests and approvals;
- Notice of Acceptance of Work;
- Release of Liens; and
- any correspondence, complaints, and resolution of complaints.

## CHAPTER IX

### EXHIBITS

- IX-A - CDBG Housing Rehabilitation Issues
- IX-B - Rehabilitation Assistance Project Guidelines
- IX-C - Family Survey Guide
- IX-D - Request for Verification of Employment
- IX-E - Request for Verification of Deposit
- IX-F - Notice of Disposition
- IX-G - Residential Inspection Report
- IX-H - Work Write-Up and Cost Estimate
- IX-I - Request for Verification of Contractor Eligibility
- IX-J - Contract Package for Rehabilitation
- IX-K - Notice of Acceptance of Work
- IX-L - Release of Lien Forms
- IX-M - Benefits Reporting Form



## EXHIBIT IX-A

### CDBG HOUSING REHABILITATION ISSUES

To implement a CDBG Housing Rehabilitation Project, each grantee has a number of decisions to make regarding the operational format of the project. The following discussion isolates several of the more critical areas with which each project must deal.

#### ROLE OF THE GRANTEE IN CONTRACTING

Before a community begins to design criteria for applicant selection or decides what specifications will be used for construction materials, it is vital that a decision be made regarding the role of the grantee. There are basically four choices:

- the grantee serves as the prime contractor for rehabilitation contracts;
- the grantee issues construction contracts to contractors through its normal bidding process;
- the grantee makes awards to homeowners and therefore becomes a third party to all construction contracts; or
- the grantee uses the force account system, whereby its employees perform the construction tasks.

Because each option has may legal implications regarding the disbursement of funds, grantees should examine the alternatives in detail before moving into other project issues.

For example, if the grantee choses to become the prime contractor (e.g. act as the general contractor) of it the governing body choses to issue a bid for each unit, then State law governing bidding procedures will apply, including but not limited to advertising time requirements, public bid openings, and constraints regarding the point at which each construction project must be formally bid (\$2,000).

However, if the grantee choses to make an award to an individual homeowner and then acts as a third party to an agreement between the homeowner/renter/landlord and contractor, the Montana statutes governing the expenditure of funds by the local government do not apply in the same manner. Using this alternative, the homeowner and grantee can accept "cost proposals" or bids without encountering the same dollar limitations placed upon the project as in the above two alternatives.

It is important to remember that regardless of the option selected, OMB Circular A-102 attachment 0 still applies. Attachment 0 mandates that a competitive selection process be used, that awards be made to the lowest cost submitted by a qualified respondent, and formal advertising and bids are required if the project exceeds \$10,000. Under the force account alternative, all of the employment procedures related to construction type labor apply as do State, federal, and local purchasing requirements for material and supplies.

## METHODS OF REVIEW/AWARD

Just as decisions regarding systems that establish the contracting role of the grantee must be made, choices also exist regarding the process of reviewing applications for assistance and making appropriate awards. The grantee has the following options:

- creating advisory and/or loan review boards to assist with management;
- utilizing an executive staff (force account or contract);
- making decisions regarding each applicant at the governing body level; or
- combinations thereof.

The management, review and award process depends to some extent upon the role the grantee has chosen. If the grantee is to be the prime contractor and therefore subcontract all work or desires to bid each project under the governing body's normal bidding process, then the governing body must accept responsibility for awarding contracts. If the grantee has chosen to become a third party to a contract, it may then be possible for an advisory group to accept primary responsibility for the disbursement of funds in the form of awards to recipients.

While the systems employed are as diverse as the users, it is important that administrative and management procedures be consistent with legal constraints and community needs.

## PROGRAM GUIDELINES

The statutory requirements of a rehabilitation program, as well as the fact that each community has great latitude in establishing program guidelines, is often difficult for a grantee to deal with. Some areas where options exist include:

- loan and/or grant limits;
- application procedures;
- repayment schedules;
- bid sheets;
- materials required;
- contracts between the project and homeowners, renters, landlords and contractors;
- the type of people targeted for service, such as elderly, handicapped, and female head of household; and
- the time established for certain activities to occur.

However, there are certain areas where choices do not exist. For example, if the CDBG application indicated that it would serve only low to moderate income families, then the project can not serve those above Section 8 income guidelines. While there may be limited choices in the types of income information collected for each applicant, the project must maintain files verifying the income level. The project must have written documentation regarding all expenditures, applicant actions, awards, contract actions, and other related activities requiring formal commitment by the project.



## EXHIBIT 1X-B

### REHABILITATION ASSISTANCE PROJECT GUIDELINES

NOTE: This is an example only. Guidelines for each grantee's project will vary according to project design as represented in its application to DOC for CDBG assistance. The following guidelines are for a owner-occupied project, and need to be verified for consistency with State law and any local requirements.

#### I. PURPOSE OF THE PROGRAM

- A. The (name of grantee, City, Town or County of \_\_\_\_\_), Montana, acting by and through the Community Development Agency shall provide financial assistance to those applicants of (name of community) who reside in those areas specified in the Grant Application for Montana Community Development Block Grant (CDBG) Program funds as approved by the Montana Department of Commerce (DOC) and who meet the eligibility criteria specified herein.
- B. The sole purpose of the financial assistance provided shall be to provide decent, safe, and sanitary housing for low and moderate income residents by rehabilitation of existing structures to a condition which brings the structure into compliance with: (See requirements as outlined in Step 2 of this Chapter, Establishing Project Guidelines.)
- C. This program shall be operated in accordance with all applicable rules and regulations of the (name of grantee), the State of Montana, DOC, and the U.S. Government.

#### II. DESIGNATED AUTHORITY

- A. The Community Development Agency of the (name of grantee) shall be the designated authority to administer the Rehabilitation Program of the (name of community).
- B. The Loan Review Committee shall be designated as the approving officer.
- C. The Rehabilitation Specialist shall be the officer designated to submit all applications for approval, on behalf of the applicant. Furthermore, in the event of present or future participation by the (name of grantee) in the Department of Housing and Urban Development's (HUD) Section 8 Rehabilitation Loans, and/or private investor loans (banks, savings and loans, or other such institutions), the Rehabilitation Specialist shall be the designated authority to prepare and submit applications to the appropriate funding source.

#### III. ELIGIBILITY REQUIREMENTS FOR CDBG FINANCIAL ASSISTANCE

- A. The applicant must be an individual or family who owns and occupies a residential unit. The applicant will be considered the owner if he or she:
1. Is the "owner of record" on the books at the Clerk and Recorder's Office;
  2. Possesses a valid contract for deed which has been or will be filed for record at the Clerk and Recorder's Office and which includes reasonable rights of redemption and quiet and peaceable possession of the property; or
  3. Possesses a life estate which has been, or may be, filed for record at the Clerk and Recorder's Office.
- B. The Owner Occupied Structure must be located in (describe eligible area, whether community-wide, restricted to certain census enumeration districts, or targeted to a certain geographical area as shown on a map included as an attachment.)
- C. Since CDBG funds are intended to serve low and moderate income residents or hardship cases who have no other means of financing repair or improvements, such funds shall not be available to any owner-occupants who have substantial financial resources available.
- D. To qualify for assistance, the gross income of the applicant shall not exceed the limits contained in current Section 8 income guidelines. (For assistance through loans, annual reverification of income and adjustment to amount of loan repayment should be included. Also, if loans of varying interest rates are offered, differential income structures may be established such that the lower the income, the lower the amount of interest charged.)

#### IV. INCLUDABLE COSTS FOR CDBG FUNDED REHABILITATION

CDBG rehabilitation funds shall be used only for those repairs and/or replacements which are necessary to correct actual or incipient violations of the housing codes as listed in Section I-B, or which have been designated as eligible items and identified by notice from DOC, or as named in the HUD Rehabilitation Financing Handbook 7375.1 Rev., or other such handbooks and/or notices which may be received from DOC or HUD.

#### V. CDBG REHABILITATION ASSISTANCE AMOUNTS

- A. When all qualifications have been met by the applicant, he or she shall be entitled to receive CDBG rehabilitation assistance in the amount necessary to bring the property up to meet standards listed in Section I-B but not to exceed \$ (10,000). No applicant may receive more than one CDBG rehabilitation assistance grant.

B. In the event (\$10,000) is not sufficient to bring the property up to meet minimum property standards and the codes, CDBG rehabilitation assistance will not be approved unless:

1. Used in conjunction with an approved Section 504 Rehabilitation Loan or from Farmers Home Administration.
2. The applicant places the necessary funds in escrow with the CDBG rehabilitation assistance funds when the Contract is signed.
3. Used in conjunction with an approved rehabilitation loan from a private investor as defined in Section VII and VIII.

#### VI. CDBG USED IN CONJUNCTION WITH OTHER REHABILITATION FUNDS

##### A. Section 504 Rehabilitation Loans

The Community Development Agency must submit applications for Section 504 Rehabilitation Loans to the Farmers Home Administration on behalf of applicants who meet the requirements of the Section 504 Program at the time of application. All rules and regulations of the Farmers Home Administration governing such loans shall be adhered to, and documentation of such compliance shall be maintained in the Community Development Department applicant's file.

B. CDBG rehabilitation funds may be used in conjunction with Section 504 Rehabilitation Loans; however, CDBG funds shall not exceed the maximum amount specified in Section V or the amount necessary to reduce the applicant's monthly housing expense after rehabilitation to 25% of the applicant's gross income, whichever is less.

#### VII. LOAN SUBSIDY PROGRAM

CDBG rehabilitation funds may be used to subsidize interest rates for rehabilitation loans secured from private investors such as banks, savings and loans, mortgage companies, etc. The subsidy paid from CDBG funds shall be restricted to payments necessary to reduce the interest rate from the current market rate to a more favorable rate to be determined by the private lending institution and the Community Development Agency.

The Community Development Agency shall prepare and submit the loan application to the private investor for approval. The private investor shall be given the first position of security by means of a promissory note and mortgage from the applicant to the private investor.

If there is an existing mortgage on the property to be rehabilitated, the private investor may, at his or her discretion, disapprove the application, accept a secondary mortgage position or refinance the existing mortgage. Terms of the mortgage shall not exceed ten (10) years or a maximum amount of \$10,000.

#### VIII. GUARANTEED LOANS

CDBG funds may be used to guarantee rehabilitation loans from private investors (banks, savings and loans, mortgage companies, etc.).

The Community Development Agency shall place in escrow with the participating private investor, 100% of the first loan to establish a default reserve account. For each succeeding loan, the Community Development Agency shall deposit ten percent (10%) of the contract price for each rehabilitation loan approved by the participating private investor until the default reserve account reaches \$50,000.

After the default reserve has reached the \$50,000 maximum, the Community Development Agency shall make further deposits only if the default reserve account is reduced by virtue of a default on the mortgage resulting in foreclosure by the private investor and disposition of the mortgaged property. Funds shall be drawn from the default reserve account only in the amount necessary to clear the balance of the mortgage after disposition by sale of the property by the mortgage holder.

Terms of the mortgage shall be negotiated at an interest rate acceptable to the Community Development Agency and the lending institution (not more than ten (10) years, and not more than \$10,000.)

#### IX. SECURITY REQUIREMENTS, OPTION 1

A. A property lien or promissory note and mortgage to the (name of grantee), Montana, or such Agency as they may designate shall be required on every CDBG rehabilitation assistance. Said lien or note and mortgage will be properly filed and include the following provisions:

1. Zero percent (0%) interest rate.
2. No payment shall be due from the property owner as long as the property is the legal residence of the recipient.
3. If the property is transferred by sale or the recipient ceases to occupy the property as his or her legal residence, repayments of the CDBG Rehabilitation Assistance shall be due and payable immediately. At the end of each year, the repayment amount shall be reduced by twenty percent (20%) or one-fifth (1/5) of the total amount of the CDBG Rehabilitation Assistance until a zero balance is obtained at the end of five

(5) years. For example, on the maximum CDBG Rehabilitation Assistance of (\$10,000), the following repayment schedule would apply:

<u>Date of Mortgage</u>	<u>Repayment Amount</u>
End of Year 1	\$8,000
End of Year 2	6,000
End of Year 3	4,000
End of Year 4	2,000
End of Year 5	-0-

4. The (name of grantee) or such Agency as they may designate will file a Release of Mortgage upon receipt of payment, or at the conclusion of the fifth (5th) year of occupancy by the applicant.
5. The requirement of security documents (Note and Mortgage) may be waived by the Community Development Director when it is determined to be in the best interest of the program.

#### IX. SECURITY REQUIREMENTS, OPTION 2

- A. A property lien or promissory note and mortgage to the (name of grantee), Montana or such Agency as they may designate shall be required on every CDBG rehabilitation assistance. Said lien or note and mortgage will be properly filed and include following provisions:
  1. Zero percent (0%) interest rate.
  2. No payments shall be due from the property owner as long as the property is the legal residence of the recipient.
  3. If the property is transferred by sale of the recipient ceases to occupy the property as his or her legal residence, repayments of the CDBG rehabilitation assistance shall be due and payable immediately.
  4. The (name of grantee) or such Agency as they may designate will file a release or mortgage upon receipt of payment.

#### IX. SECURITY REQUIREMENTS, OPTION 3

No Security requirements, Straight Grant.

#### X. ACQUISITION AND REHABILITATION BY PUBLIC BODIES

- A. Upon approval of the (City or Town Council, or County Commission), CDBG rehabilitation assistance funds may be used to rehabilitate properties owned or acquired by the County Development Agency (public body) which are either to remain in public ownership or to be sold.

B. Other Rehabilitation Assistance

CDBG funds may be used for temporary on-site relocation expenses for those displaced temporarily by rehabilitation activities being carried out with CDBG assistance.

C. Historic Preservation

Upon approval of the (City, or Town Council, or County Commission), the use of CDBG funds for rehabilitation assistance may include property listed on the National, State, and Local Registers of Historic Places.

XI. EMERGENCY REPAIR

A. The Community Development Agency shall have the authority to grant funds for emergency repairs on any structure which it determines to be feasible. Such funds shall be granted for the following reasons:

1. Any act of nature resulting in critical damage to the structural condition.
2. To eliminate specific hazards to health and sanitation.

B. The Community Development Director or delegated representative(s) shall review all applications for emergency repairs prior to approving a grant, and the decision of the review shall be final.

C. The applicant must meet the eligibility requirements for the CDBG rehabilitation assistance to receive emergency repairs. The Community Development Agency shall have the authority to waive prior verification of eligibility in cases where an immediate danger to health, safety, or sanitation exists. The applicant shall be notified that in event the verification of eligibility should reveal the applicant does not fall within the requirements, they shall be required to make full restitution to the Department.

D. Such emergency repairs shall not prejudice the right of the applicant to make applications for rehabilitation assistance loans, grants or any combinations thereof for which he or she may be eligible.

E. Emergency repairs shall not exceed (\$2,000) per applicant and no applicant shall be entitled to more than one emergency repair grant.

XII. CONTINGENCY FUNDS

At the discretion of the Rehabilitation Specialist, additional funding not to exceed ten percent (10%) of the original contract, or (\$1,000), whichever is less, may be utilized as a contingency fund to pay the cost of repair and/or replacement of actual or



incipient code violations which were not observed and included in the original contract.

Example 1: Terminate infestation and damage not discovered until repairs were begun.

Example 2: Collapsed sewer lines not discovered until roto-rooting was attempted.

#### XIII. FILES AND REPORTS

The Community Development Agency shall maintain accurate files and records on each applicant and all documentation pertinent to the applicant shall be included. Such files shall be open for inspection as to qualifications, bid procedures, inspections of work, and payments from the escrow account.

#### XIV. ESCROW ACCOUNT

All funds for CDBG rehabilitation assistance shall be placed in the Rehabilitation Escrow Account. Checks for rehabilitation assistance shall be made payable to the applicant, who shall endorse said check at the time the contract is signed. The Contractor shall not be allowed to make preliminary withdrawals from this account on any CDBG rehabilitation assistance. Such funds deposited in Escrow shall serve as a statutory bond for the Contractor and shall not be disbursed until all proper lien waivers are received.

#### XV. BIDDING PROCEDURE

- A. Contractor selection shall be in accordance with State law and the requirements of OMB Circular A-102, Attachment O.
- B. The homeowner shall have the right to select any qualified Contractor. If the Contractor selected has not been previously approved by the Community Development Agency, he or she shall submit contractor qualification forms, a credit report, and a Certificate of Insurance. If the Contractor is approved by the Agency, then he or she will be awarded the contract.
- C. The homeowner shall have the right to select more than one Contractor for competitive bidding. All Contractors' bidding must meet Department's requirements to be eligible to do rehabilitation. If the Homeowner has no preference, two or more Contractors will be assigned from the approved Contractor rotation file to bid on their job.

#### XVI. CONTRACTOR QUALIFICATIONS

- A. The Community Development Agency shall adopt and abide by the qualifications and regulations established by the HUD

Rehabilitation Handbook dated February, 1974, and all subsequent revisions thereto.

- B. The Contractor shall carry insurance as required by the (name of grantee) and State of Montana and liability insurance at minimum of \$100,000/\$3000,000/\$50,000.
- C. Where applicable, the Contractor shall be licensed pursuant to the State statutes. (See requirements as outlined in Step 2 of this Chapter.)

#### XVII. RECEIPT OF APPLICATIONS, OPTION 1

The Community Development Department will accept applications for verification from owner occupants of the specified area. All applications shall be considered on a "first come -- first served" basis.

#### XVII. RECEIPT OF APPLICATIONS, OPTION 2

The Community Development Agency will accept application for verification from owner occupants of the specified area. All applicants shall be verified as to eligibility and shall be granted on the first working day of each month.

Those applications receiving the highest number of grade points shall be considered as first priority applications. The Rehabilitation Specialist shall be responsible for the grading of the applications in accordance with the following schedule:

<u>Income</u>	<u>Maximum 5 points</u>
One point for each 10% below eligibility limit	
<u>Housing Conditions</u>	<u>Maximum 10 points</u>
Lack of essential plumbing	3 points
Lack of essential heating	2 points
Lack of adequate electrical	2 points
Condition of foundation, roof, or exterior walls	2 points
Condition of windows and doors	2 point
<u>Age of Occupant or Handicapped</u>	<u>Maximum 5 points</u>
One point for every 5 years over 60 or Head of Household or 5 points for Handicapped.	
Female Head of Household	2 points
Large Family (above four dependents)	2 points
Length of time as qualified applicant - One point for each six months	6 points maximum
Total Maximum Points	30



## XVIII. CONTRACTING REHABILITATION WORK

- A. This section sets forth requirements and procedures with respect to construction contracts for rehabilitation financed through a rehabilitation grant and/or a rehabilitation loan and shall be undertaken only through a written contract between the contractor and the recipient of the grant or loan. The Community Development Agency shall assist each applicant in arranging for and obtaining an acceptable construction contract.

### 1. Form of Contract

The construction contract will consist of a single document signed by the Contractor and accepted by the applicant only, following approval of the rehabilitation grant and/or loan. It shall contain a bid and proposal by the Contractor and the general conditions, as well as the specifications for the work to be performed.

### 2. Acceptance of Contractors

The Community Development Agency shall always exercise care and good judgment in approving a Contractor. An approved Contractor shall be of good reputation, financially sound, have adequate financial resources to carry out the bid and proposal, and be qualified to do the required work. The Department shall frequently monitor its list of Contractors to assure that they continue to be acceptable.

## XIX. PERMITTING REQUIREMENTS

All required permits pursuant to State law and local requirements must be obtained prior to commencing rehabilitation work. (See Step 2 of this Chapter.)

## XX. INSPECTION OF REHABILITATION WORK

- A. This section sets forth the requirements for the inspection of rehabilitation work financed in whole or in part with a rehabilitation grant and/or loan.

### B. Responsibility for Making Inspections

The Community Development Agency shall make inspections of construction work in cases involving a residential loan and for such loans under (\$10,000) regardless of the number of dwelling units involved. To accomplish this, Community Development Agency shall make:

1. Compliance inspection, as necessary, to assure that the construction work is being completed in accordance with the construction contract.
2. A final inspection to determine that the construction work has been completed in accordance with the construction contract.

In addition, the Community Development Agency is responsible for assuring that inspection of plumbing and/or electrical work is accomplished. (See requirements in Step 2 of this Chapter.)

C. Final Inspection

Upon completion of the rehabilitation work and receipt of the contractor's invoice containing his or her certification of satisfactory completion of all work in accordance with the contract and his or her warranty, the Community Development Agency shall arrange for inspection of the completed work.

D. Making Final Payment

When the final inspection determines that the work is satisfactorily completed in accordance with the contract, the Community Development Agency shall obtain from the Contractor a Release of Liens, and a copy of each warranty due to the applicant for the work. After receipt of a Release of Liens, including releases from all subcontractors and suppliers and a copy of each warranty, the Agency shall make final payment from the Escrow Account in accordance with rules and regulations.

E. One Year Guarantee on Work by Contractor

All work performed by the Contractor is covered by a one (1) year guarantee but property owners are not always aware that, for a period of one year, they may require the Contractor to current significant defects and inadequacies in the work performed under this contract.

XXI. CHANGES, WAIVERS, AND/OR CONFLICTS

- A. The (City or Town Council, or County Commission) shall have the right to change, modify, or revoke all of any part of this plan by a majority vote of the Council provided an acceptable alternate Rehabilitation Program is approved.

CONFIDENTIAL

## FAMILY SURVEY GUIDE\*

DATE: \_\_\_\_\_ INTERVIEWED BY: \_\_\_\_\_

Number of Dwelling Units: \_\_\_\_\_

Applicant's Name: \_\_\_\_\_ Age: \_\_\_\_\_  
First Middle Last

If married, spouse's name: \_\_\_\_\_ Age: \_\_\_\_\_

Address: \_\_\_\_\_

Property Description: Lot \_\_\_\_\_ Square \_\_\_\_\_ Subdivision \_\_\_\_\_

NUMBER OF DEPENDENTS

Names	Age	Sex
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EMPLOYMENT DATA: (If less than two (2) years, give name of previous employer)

Employer's Name: \_\_\_\_\_ How Long: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Monthly Salary: \_\_\_\_\_

Previous Employer: \_\_\_\_\_ How Long: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Monthly Salary: \_\_\_\_\_

Spouse's Employer: \_\_\_\_\_ How Long: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Monthly Salary: \_\_\_\_\_

Previous Employer: \_\_\_\_\_ How Long: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Monthly Salary: \_\_\_\_\_

\*This survey is suitable for both loans and grants. A simplified form may be more appropriate when used only for grants.

OTHER INCOME AND SOURCE

Social Security, Welfare, Retirement or Veteran, Rental Property Income:

\_\_\_\_\_ Amount: \_\_\_\_\_

\_\_\_\_\_ Amount: \_\_\_\_\_

Savings Bonds &amp; Other Securities: \_\_\_\_\_ Amount: \_\_\_\_\_

Social Security #: \_\_\_\_\_ Spouse's Social Security #: \_\_\_\_\_

Name of Bank: \_\_\_\_\_

Savings Account: Yes ( ) No ( ) Amount: \_\_\_\_\_

Checking Account: Yes ( ) No ( ) Amount: \_\_\_\_\_

Other Real Estate Owned: \_\_\_\_\_ Value: \_\_\_\_\_

MONTHLY HOUSING EXPENSES:

	<u>Monthly Payments</u>	<u>Balance Due</u>	<u>Name of Company</u>
Current Mortgage	_____	_____	_____
Hazard Insurance	_____	_____	_____
Flood Insurance	_____	_____	_____
Property Taxes (Secure information from Tax Receipt)	_____	_____	_____
Heat and Utilities (Name Account is in)	_____	_____	_____
TOTAL:	_____	_____	_____

Name Property is listed under: \_\_\_\_\_

LIABILITIES:

Automobile \_\_\_\_\_

Other Loans/Credit Accounts (specify)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TOTAL: \_\_\_\_\_

MONTHLY FIXED CHARGES:

Income Taxes  
(Federal and State) \_\_\_\_\_

Social Security \_\_\_\_\_

Retirement \_\_\_\_\_

Life Insurance \_\_\_\_\_

Other \_\_\_\_\_

TOTAL: \_\_\_\_\_

TOTAL MONTHLY COSTS  
(Housing, Other Liabilities, Fixed Charges) \$ \_\_\_\_\_

OTHER:

Record of Previous Foreclosures:

Yes ( )      No ( )

If yes, property address: \_\_\_\_\_

Name and Address of Lender: \_\_\_\_\_

Remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CERTIFICATION OF APPLICANT(S):

I (we) hereby certify that the statements made by me (us) are true and correct to the best of my (our) belief and knowledge.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



Exhibit IX-D

REQUEST FOR VERIFICATION OF EMPLOYMENT

COMMUNITY DEVELOPMENT REHABILITATION PROGRAM		C. APPLICATION NUMBER	
REQUEST FOR VERIFICATION OF EMPLOYMENT			
A. NAME AND ADDRESS OF APPLICANT FOR LOAN		D. DATE OF REQUEST	
		<p>NOTE TO EMPLOYER</p> <p>The applicant identified in Block A has applied for Rehabilitation Assistance. The applicant has authorized this Agency in writing to obtain verification from any source named in the application. Your verification of employment is for the confidential use of this Agency. Please furnish the information requested below and return this form, using the stamped, addressed envelope provided.</p>	
B. NAME AND ADDRESS OF APPLICANT'S EMPLOYER			
EMPLOYER'S VERIFICATION			
E. POSITION HELD		I. RATE OF PAY	
		Hourly \$ _____	
F. DATE OF EMPLOYMENT		Annual \$ _____	
G. PROBABILITY OF CONTINUE EMPLOYMENT		ADDITIONAL COMPENSATION -- ACTUAL AMOUNTS RECEIVED PAST 12 MONTHS	
		Overtime \$ _____	
H. OTHER REMARKS		Commissions \$ _____	
		Bonus \$ _____	
		<p>*If the applicant is in military service, give income on monthly basis as follows:</p> <p>Base Pay \$ _____</p> <p>Quarters and Subsistence \$ _____</p> <p>Flight or Hazardous Duty Allowance \$ _____</p>	
J. SIGNATURE OF EMPLOYER		K. NAME & ADDRESS OF AGENCY TO WHICH THIS FORM SHALL BE RETURNED	
<p>The above information is furnished in strict confidence, in response to your request.</p> <p>Signature _____</p> <p>Title _____</p> <p>Date _____</p>			
		L. AUTHORIZATION	
		<p>I hereby authorize the release of the above requested information.</p> <p>Signature of Applicant _____</p>	





Exhibit IX- E

REQUEST FOR VERIFICATION OF DEPOSIT

COMMUNITY DEVELOPMENT REHABILITATION PROGRAM	C. APPLICATION NUMBER
A. NAME AND ADDRESS OF APPLICANT FOR LOAN	D. DATE OF REQUEST
	E. BALANCE \$ _____
B. NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	F. TYPE OF ACCOUNT

NOTE TO BANK OR OTHER DEPOSITORY: The applicant(s) identified in Block A has applied for rehabilitation assistance. The applicant(s) has indicated in a financial statement the information shown in Blocks E & F above concerning a deposit with you, and has authorized this Agency in writing to verify this information with any source named in the application. We also wish to know whether the applicant(s) has any loans outstanding with your institution. Your verification of this information, together with any other information that may be of assistance in rendering a decision, is for the confidential use of this Agency. Please furnish the information requested below and return this form to the Agency shown in Block M, using the stamped, addressed envelope provided. Any statements on your part or on the part of any of your officers as to the responsibility or standing of any person, firm, or corporation is a matter of opinion and is given as such, and solely as a matter of courtesy, for which no responsibility is attached to your institution or any of your officers.

VERIFICATION OF BANK OR OTHER DEPOSITORY			
G. IS INFORMATION GIVEN IN BLOCKS E & F APPROXIMATELY CORRECT? Yes ( ) No ( )  If <u>NO</u> , explain:	H. LOANS OUTSTANDING TO APPLICANT	DATE OF LOAN	BALANCE OUTSTANDING
	1. Secured	_____	_____
	2. Unsecured	_____	_____
	K. OTHER		

L. SIGNATURE OF OFFICIAL OF BANK OR OTHER DEPOSITORY

The above information is furnished in strict confidence in response to your request, and is solely for use of the Agency shown in Block M.

\_\_\_\_\_  
 Date                      Signature                      Title

M. NAME AND ADDRESS OF AGENCY TO WHICH THIS FORM IS TO BE RETURNED	N. AUTHORIZATION: I hereby authorize release of the above requested information.  _____ Signature of Applicant
--	---



EXHIBIT IX-F

NOTICE OF DISPOSITION

(Type on letterhead of grantee)

(Date)

(name of owner receiving rehabilitation assistance)

(address)

(\_\_\_\_\_ , Montana Zip)

Dear (name of owner):

This letter serves to inform you that you have been awarded a (grant or loan) in the amount of \$ \_\_\_\_\_ under the Housing Rehabilitation Program funded by a Montana Community Development Block Grant to the (name of grantee).

Within the next five days (name), Housing Rehabilitation Specialist will be contacting you concerning the selection of a contractor to perform the rehabilitation services described in the work write-up prepared by the Housing Inspector.

If you have any questions please contact (name), Rehabilitation Specialist, at (telephone number).

Sincerely,

(signature)

typed name

CDBG Project Administrator

Mailing Address

Telephone number



# Exhibit IX-G

## RESIDENTIAL INSPECTION REPORT

Telephone # \_\_\_\_\_  
 Occupant \_\_\_\_\_ Date \_\_\_\_\_  
 Location of Property \_\_\_\_\_  
 Type of Construction \_\_\_\_\_  
 # Stories \_\_\_\_\_ # Units \_\_\_\_\_  
 # Habitable Rooms \_\_\_\_\_ # Bedrooms \_\_\_\_\_ # Occupants \_\_\_\_\_

KEY: A-Acceptable E-Exterminate I-Install P-Paint W-Remove X-Repair R-Replace  
 Z-Provide

NOTE: Indicate only code and incipient items.

WORK ITEMS	EXISTING CONDITIONS	WORK REQUIRED
1. Excavation		
a. Trench.....	_____	_____
b. Grading of crawl spaces.....	_____	_____
c. Backfill.....	_____	_____
2. Foundations		
a. Footing.....	_____	_____
b. Foundation walls.....	_____	_____
c. Girders, beams, sills, grade- beams, posts, columns, piers...	_____	_____
d. Condition below first floor, ventilation, drainage, access doors, termite shields, ground clearance, trash, other items..	_____	_____
e. There is (evidence)(no evidence) of termites, dry rot, or decay damage.....	_____	_____
3. Chimneys		
a. Masonry chimneys.....	_____	_____
b. Specially fabricated chimneys or flues.....	_____	_____
4. Fireplaces (existing)		
a. Masonry fireplaces.....	_____	_____
b. Metal fireplace units.....	_____	_____
5. Exterior Walls		
a. Stud framed.....	_____	_____
b. Masonry.....	_____	_____
c. Masonry veneer over stud frame.	_____	_____
d. Incidental masonry items.....	_____	_____
6. Floor framing		
a. Joists, hangers, bridging, nail	_____	_____
b. Slabs, forms, etc.....	_____	_____
c. Basement floor or other slab...	_____	_____
7. Subflooring.....	_____	_____
8. Finish Flooring.....	_____	_____

<u>WORK ITEMS</u>	<u>EXISTING CONDITIONS</u>	<u>WORK REQUIRED</u>
9. Partition Framing (incl. closets)		
a. Stud framing.....	_____	_____
b. Masonry.....	_____	_____
c. Lintels for masonry partitions.	_____	_____
10. Ceiling Framing		
a. Joists, nails.....	_____	_____
b. Strongblocks.....	_____	_____
c. Hangers and suspended ceilings.	_____	_____
11. Roof Framing		
a. Rafters & joists, ridge pole, hip & valley rafters, collar beams, nails.....	_____	_____
b. Purlins & braces, nails.....	_____	_____
12. Roofing		
a. Roof covering materials.....	_____	_____
b. Valleys.....	_____	_____
c. Flashings at intersections of roof & wall surfaces.....	_____	_____
d. Skylights & scuttles.....	_____	_____
e. Fascia boards, eaves & soffits	_____	_____
13. Gutters & Downspouts		
a. Gutters.....	_____	_____
b. Downspouts.....	_____	_____
c. Scuppers & leader heads.....	_____	_____
d. Splash backs & downspout con- nections to drains.....	_____	_____
14. Entrances & Exterior Detail		
a. Exterior doors.....	_____	_____
b. Exterior detail.....	_____	_____
15. Wall Condition		
a. Lath, plaster, cornerites, corner beads.....	_____	_____
b. Wallboard or other finish materials, taping or other joint treatment, nailing strips, fastenings.....	_____	_____
c. Furring.....	_____	_____
d. Plaster cornice or cove.....	_____	_____
16. Decorating.....	_____	_____
17. Interior Doors & Trim		
a. Interior doors.....	_____	_____
b. Cascd openings.....	_____	_____
c. Running trim such as base & shoe mold, chair rail, picture mold, interior wood cornice...	_____	_____

		WORK REQUIRED
WORK ITEMS	EXISTING CONDITIONS	
18. Windows		
a. Windows.....	_____	_____
b. Window screens.....	_____	_____
c. Caulking of frames.....	_____	_____
19. Cabinets & Interior Detail		
a. Kitchen cabinets.....	_____	_____
b. Medicine cabinets.....	_____	_____
c. Other cabinets, closets, etc...	_____	_____
d. Clothes closet equipment.....	_____	_____
20. Stairs		
a. Main stair.....	_____	_____
b. Basement stair.....	_____	_____
c. Attic stair.....	_____	_____
d. Disappearing stair.....	_____	_____
e. Built-in ladder.....	_____	_____
f. Porch or balcony stair.....	_____	_____
g. Reinforced concrete stair.....	_____	_____
21. Special Floors & Wainscot		
a. Finish flooring (non-wood)....	_____	_____
b. Special interior door saddles or thresholds.....	_____	_____
c. Wainscot.....	_____	_____
d. Base not part of wainscot.....	_____	_____
22. Plumbing		
a. Within structure for each unit		
1. Single bathroom & kitchen...	_____	_____
2. Bathroom accessories.....	_____	_____
3. Additional installations duplicating above.....	_____	_____
4. Water heater and connections	_____	_____
5. Gas distribution system....	_____	_____
6. Floor drains.....	_____	_____
7. Sill cocks.....	_____	_____
8. Additional fixtures.....	_____	_____
9. Accessory equipment.....	_____	_____
10. Installations/other units...	_____	_____
b. House sewer.....	_____	_____
c. House water service.....	_____	_____
d. Gas service connection.....	_____	_____
e. Individual gas supply.....	_____	_____
f. Individual water supply system.	_____	_____
g. Individual sewer disposal.....	_____	_____
h. Exterior drains.....	_____	_____
23. Heating/Ventilation/Cooling		
a. Heating system.....	_____	_____
b. Cooling system.....	_____	_____
c. Ventilating system.....	_____	_____

<u>WORK ITEMS</u>		<u>EXISTING CONDITIONS</u>	<u>WORK REQUIRED</u>
24.	Electrical Service		
	a. Service.....	_____	_____
	b. Distribution system.....	_____	_____
	c. Power outlets.....	_____	_____
	d. Exterior wiring to exterior buildings.....	_____	_____
	e. Measurement: units & outlets...	_____	_____
25.	Lighting Fixtures.....	_____	_____
26.	Insulation.....	_____	_____
27.	Miscellaneous		
	a. Status of secondary buildings located on property.....	_____	_____
	b. Fences.....	_____	_____
	c. General landscaping & other on-site improvements present or needed.....	_____	_____
	d. Basement.....	_____	_____
28.	Yards		
	a. Setback.....	_____	_____
	b. Side yards.....	_____	_____
	c. Rear yards.....	_____	_____



## WORK WRITE-UP AND COST ESTIMATE

Note: This is an example only. Insert applicable information for each case.

Applicant:

Application #:

Address:

Inspector:

Date Inspected:

		Estimated Cost
<u>Living Room</u> (10' x 15')		
Floors	Remove existing subfloor (approximately 210 square feet) and replace with plywood at least 5/8".	\$ _____
	Install sheet vinyl over wood surface, "Armstrong Standard" or equal (approximately 210 square feet).	\$ _____
Walls	Patch holes and cracks in existing plaster (approximately 6 square feet). Include lathing on south and west walls.	\$ _____
	Paint walls (approximately 480 square feet) with two coats of interior latex paint, "Sherman Williams Good" or equal, with roller.	\$ _____
<u>Bedroom #2</u> (9' x 11')		
Window	Install screen and lock (3' x 4').	\$ _____
Doors and Woodwork	Paint using semigloss "Sherman Williams Good" or equal using brush.	\$ _____
<u>Hall</u> (4' x 10')		
Ceiling	Install frame and cover on access hole (approximately 3' x 3').	\$ _____
Electric	Remove existing hanging light cord and replace with NL approved ceiling fixture with switch	\$ _____
Closet	Rebuild existing closet 3'9" x 2'0"; door size 2068; install 12" #2 pine shelf and 1-3/8" clothes pole.	\$ _____

		Estimated Cost
<u>Kitchen</u> (11'6" x 14'5")		
Ceiling	Install 12" x 12" celotex tile over existing wood ceiling (approximately 165 square feet) with adhesive.	\$ _____
Windows	Remove existing wood windows, reset and install new trim (approximately 2' x 3').	\$ _____
	Paint window trim using semigloss with brush.	\$ _____
Cabinets	Remove 3 base kitchen cabinets and countertop.	\$ _____
	Install 36" door base cabinets with 2 drawers and 2 cabinets and Formica countertop with 4" blacksplash.	\$ _____
	Install 36" wall cabinets 26" over base cabinet.	\$ _____
	Install stainless steel sink in top (32" x 21").	\$ _____
Electric	Install 10" ventilating fan, vent fan through wall over stove.	\$ _____
	Remove existing electrical panel box and install a new panel box (100 amp. minimum with breaker switch) and place all wiring inside wall. Replace all hazardous wiring as per code.	\$ _____
	Install 2 new electrical outlets in kitchen, check wiring, replace as necessary.	\$ _____
<u>Bathroom</u> (6' x 8')		
Floor	Remove existing subfloor (approximately 54 square feet), replace with plywood subfloor at least 5/8".	\$ _____
	Install vinyl asbestos floor tile, "Armstrong Standard" or equal (approximately 48 square feet).	\$ _____
Ceiling	Remove water damaged plaster down to the lathes, replace lathes if damaged, replaster (approximately 48 square feet), and paint with 2 coats of interior "Sherman Williams Good" or equal.	\$ _____
Walls	Scrape, seal, and repaint all walls with 2 coats of interior latex, "Sherman Williams Good" or equal.	\$ _____
Toilet	Remove and replace existing toilet with new toilet, "Standard Quality" or equal.	\$ _____

<u>Exterior</u>		<u>Estimated Cost</u>
Joists	Remove four rear joists, size 2" x 10" x 14', and replace with same size joists.	\$ _____
Facia and Trim	Remove 2 deteriorated barge rafters size 2" x 6" x 12'. Replace with same size rafters.	\$ _____
Screen Doors	Replace 2 existing deteriorated screen doors 3' x 6'8" with new aluminum screen doors of the same size.	\$ _____
Exterior Windows	Weatherstrip 8 windows with spring bronze and caulk as needed.	\$ _____
Roof	Remove existing asphalt roofing down to existing sheathing. Remove and replace sheathing if deteriorated.	\$ _____
	Install new asphalt/shingles/300 lb. Flash all valleys. Install new aluminum gutters and down spouts.	\$ _____



EXHIBIT IX-I

REQUEST FOR VERIFICATION OF CONTRACTOR ELIGIBILITY

(Type on letterhead of grantee)

(Date)

Department of Commerce  
Community Development Division  
Cogswell Building, Room C-211  
Capitol Station  
Helena, MT 59620

The (name of grantee: City, Town, or County of \_\_\_\_\_) is ready for homeowners to enter into contracts for housing rehabilitation under the (name of project).

Please check the current "Consolidated List of Debarred, Suspended, and Ineligible Contractors" to verify eligibility of the following contractor(s):

(provide name(s) and addresses of contractors)

Sincerely,

(signature)

typed name

CDBG Project Administrator

Mailing Address

Telephone Number



EXHIBIT IX-J

CONTRACT PACKAGE FOR REHABILITATION

NOTE: This is an example only. Each contract will require its own specific information.

(name of grantee: City, Town, or County of \_\_\_\_\_)

THIS AGREEMENT, entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between (name of property owner, address) hereinafter referred to as "Owner" and (name of contractor, address), hereinafter referred to as "Contractor."

WITNESSETH

1. The Owner does hereby employ the Contractor to do all the work and provide all materials, tools, machinery, supervision, etc., necessary for the rehabilitation of the property known as (include general and legal description) of the total sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), all in accordance with the estimate, plans and specifications which are attached hereto as Exhibit "A" and expressly incorporated herein by reference and made a part hereof.
2. The Contractor does hereby agree that it will perform the work diligently and in a good workmanship manner, using the materials specified or materials of at least equal quality.
3. The Contractor shall be responsible for obtaining all necessary permits for the work to be performed, and the work being done or any part thereof shall not be deemed completed until the same has been accepted as satisfactory by the Owner or by the (grantee).
4. When adjacent property is affected or endangered by any work done under this contract, it shall be the responsibility of the Contractor to take whatever steps are necessary for the protection of the adjacent property and to notify the owner thereof of such hazard.
5. The Contractor hereby agrees not to assign or sublet this contract without the written consent of the Owner. The request for the assignment shall be addressed to the Owner, c/o the local Community Development Rehabilitation Office.
6. In the event of any breach of this contract, the Owner, may at its option engage the services of another contractor to complete the work and deduct the cost of such completion from any amount due the Contractor hereunder.
7. Upon satisfactory completion of the work, the Owner will pay the Contractor 80 percent of the contract price and will issue its written acceptance of the work, and Contractor shall immediately file the same with the Clerk and Recorder for \_\_\_\_\_

County. After the expiration of 45 days from the registry of the Notice of Acceptance and after the Contractor shall have delivered to the Owner a certificate from the Clerk and Recorder in the name of the Owner and Contractor, showing that no liens or claims arising out of the work are recorded and that more than 45 days have elapsed since the registry of the notice, this contract shall be completed and the Contractor and his or her surety shall be discharged and Contractor paid the ten percent retainage.

8. The Owner does hereby agree to pay progress payments, if any, in accordance with the following conditions:
  1. Progress payments shall not exceed 90 percent of the value of the specified work satisfactorily completed.
  2. Contracts over (\$5,000) but not exceeding (\$8,000); One (1) partial payment may be requested by the Contractor after a minimum of 50 percent of the total contract work is satisfactorily completed.
  3. Contracts over (\$8,000); Two (2) partial payments may be requested by the Contractor, (1) First partial payment -- after a minimum of 40 percent of the total contract work is satisfactorily completed; (2) Second partial payment -- after an additional 40 percent of the total contract work is satisfactorily completed.
9. The Contractor covenants and agrees to, and does hereby, indemnify, and hold harmless and defend the Owner, local Community Development Rehabilitation Office, the (name of grantee), and the State of Montana, their agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement of the work to be performed hereunder. The Contractor hereby assumes all liability and responsibility for injuries, claims or suits for damages, to persons or property of whatsoever kind of character, whether real or asserted, occurring during the time the work is being performed and arising out of the performance of the same.
10. Neither the Contractor nor any subcontractor shall commence work under this agreement until all insurance required under this paragraph has been secured and such insurance has been approved by the Owner:

Compensation Insurance: The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of its employees at the site of the project; and in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees.



Public Liability and Property Damage Insurance: The Contractor shall take out and maintain during the life of this contract, such public liability and property damages insurance as shall protect it and any subcontractor performing work covered by this contract from claims for damages or personal injury, including accidental death, as well as from claims for property damage which may arise from option under this contract, whether such operation be by itself or by one directly or indirectly employed by either of them; and the amounts of such insurance shall be as follows:

Public Liability Insurance in the amount not less than Twenty-five Thousand Dollars (\$25,000) for injuries, including accidental death, to any one person; and in an amount of not less than Fifty Thousand Dollars (\$50,000) on account of one accident.

It is further agreed that the Contractor, at its sole cost and expense, shall acquire and maintain fire and extended coverage insurance upon the entire structure on which the work on this contract is to be done, to One Hundred percent of the insurable value which is declared to be \$\_\_\_\_\_, on a form of policy approved by the Insurance Commissioner of the State of Montana, or an agency duly delegated by it for insuring such a risk in the State of Montana. Loss, if any, is to be payable to the Owner having legal title to the property that is to be rehabilitated, except in such cases as may require payment of the proceeds of such insurance to a mortgagee as its interests may appear.

11. It is agreed that the Owner is hereby obligated to issue a written proceed-order to the Contractor within thirty (30) days from the date of execution of this contract. It is further agreed that the Contractor will, after the receipt of such order, begin the work to be performed under this contract within ten (10) calendar days of the date of such order. Upon commencement of work the Contractor hereby agrees to complete the same within \_\_\_\_\_ day, time being of the essence.
12. Contractor hereby guarantees the improvements herein provided for, for a period of one year from the date of final acceptance of all work required by this contract. It is further agreed that the Contractor will furnish the Owner, c/o the Local Community Development Rehabilitation Office, with all manufacturers' suppliers' written guarantees and warranties covering materials and equipment furnished under this contract.
13. The Contractor shall at all times keep the premises free from accumulations of waste materials or rubbish caused by its employees at work; and at the completion of the work it shall remove all its rubbish from and about the building and all its tools, scaffolding and surplus materials and shall leave the work "broom clean" or its equivalent. It is further agreed that all materials, and equipment that have been removed and replaced as a part of the work hereunder shall belong to the contractor.

14. The Contractor shall, upon completion of the work, and upon final payment by the Owner, furnish the Owner with an affidavit certifying that all charges for materials and other expenses incurred by the Contractor pertaining to the execution of this contract, have been paid in full, to the end that no liens of any kind or character (save and except those between the parties hereto) may be affixed against the above described property. Final payment of the contract amount will be made only after final inspection and acceptance of all work to be performed by the Contractor, and the Contractor satisfactorily provides releases of liens or claims for liens by the contractor, subcontractors, laborers, and material suppliers.
15. The Contractor shall remove any and all cracking, scaling, peeling, chipping, and loose paint and repaint all surfaces using two coats of a non-lead base paint. Where the paint film integrity of the applicable surface cannot be maintained, the paint shall be completely removed or the surface covered with a suitable material such as gypsum, wallboard, plywood, or plaster before any repainting is undertaken.
16. This instrument constitutes the entire agreement between the parties and no written or oral agreement of any kind exists to change the provisions hereof. No other work shall be done, nor additional monies paid, unless provided for in a previously written contract, signed by the parties hereto, and approved in writing by the (name of grantee), Local Community Development Rehabilitation Office.
17. In the event there is any conflict between the provisions of this contract and the provisions of Exhibit "A", the provisions of this contract shall in all cases prevail.

#### ATTACHMENTS

GENERAL TERMS AND CONDITIONS RELATED TO EQUAL EMPLOYMENT AND LABOR STANDARDS -- For specific language, insert applicable provisions of Exhibit VIII-E and F.

Exhibit "A" -- A copy of the work write-up and cost estimates as provided by the Local Community Development Rehabilitation Office. (See Exhibit IX-H.)

IN WITNESS WHEREOF, the Contractor and Owner have executed this Agreement.

(signature) \_\_\_\_\_  
Contractor - (typed name)

(signature) \_\_\_\_\_  
Owner - (typed name)

(signature) \_\_\_\_\_  
Owner - (typed name)

(signature) \_\_\_\_\_  
Witness (typed name)

(signature) \_\_\_\_\_  
Witness (typed name)



NOTICE OF ACCEPTANCE OF WORK

TO ALL WHOM IT MAY CONCERN, and especially to all subcontractors, workers, laborers, mechanics, and furnishers of materials.

Public notice is hereby given, according to law, that \_\_\_\_\_  
\_\_\_\_\_ has accepted the work done by \_\_\_\_\_  
\_\_\_\_\_, the contractor, under this contract  
with him/her of date \_\_\_\_\_, and recorded  
in Book \_\_\_\_\_, Folio \_\_\_\_\_, of the mortgage records  
of the \_\_\_\_\_; such contract  
being entitled \_\_\_\_\_.

All subcontractors, workers, laborers, mechanics, and furnishers of material must assert whatever claim they may have against the said contractor, growing out of the execution of said contract, according to law, within sixty (60) days from registration hereof.

DATE \_\_\_\_\_ BY \_\_\_\_\_



## RELEASE OF LIEN FORMS

GENERAL CONTRACTOR'S AFFIDAVIT, WARRANTY, AND LIEN WAIVER

STATE OF MONTANA        )  
                                  ) ss.  
(        ) COUNTY        )

LOAN NO. \_\_\_\_\_  
OWNER: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
BLOCK & LOT: \_\_\_\_\_

THAT I, the undersigned, being duly sworn, do depose and say that I was contracted to construct, alter, or repair an improvement on the above described property.

THAT the improvements on the subject property have been fully and satisfactorily completed in substantial conformity with the contract.

THAT all the materials used in said improvement, all labor performed thereon, and all fees, industrial insurance, and permits, in connection with the said improvements which might give rise to liens on the within described property have been paid in full.

Listed below are all subcontractors and major materialmen included in this work. Attached are waivers of liens from all of them as substantiation of the above statement.

Name	<u>Name of Subcontractor or Materialman and Address</u>
	Address
_____	_____
_____	_____

\*\*\*\*\*

THAT the affiant hereby waives any lien or right to lien which he may have against the described property and warrants to save harmless the said Property Owner and the Rehabilitation Agency of the (name of grantee) from any liens which are now in existence, or may hereafter arise by reason of said improvements, and cause the same to be released of record immediately.

THAT the foregoing waiver and these statements are an express warranty and representation to the Rehabilitation Agency of the (name of grantee) and the Property Owner of the facts herein sworn to and is made for valuable consideration, receipt whereof is acknowledged.

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1984

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

SUBCONTRACTOR'S OR MATERIALMAN'S  
AFFIDAVIT, WARRANTY, AND LIEN WAIVER

STATE OF MONTANA     )  
                              ) ss.  
(         ) COUNTY     )

LOAN NO.: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
BLOCK & LOT: \_\_\_\_\_

THAT I, the undersigned, do depose and say that I was employed to furnish labor or engaged to furnish materials for an improvement being situated on certain real estate in (         ) County, State of Montana, as described above.

I hereby declare that I have been paid in full for my labor or the material supplied for said improvement and I waive any lien or right to lien against the described property. I warrant to save harmless the Property Owner and the Rehabilitation Agency of the (name of grantee) from any lien(s) which are now in existence or may hereafter arise by reason of said improvements.

\_\_\_\_\_  
Name of Company

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_



**CONFIDENTIAL**

[illegible]



# **Chapter X**

## **Economic Development Projects**



## CHAPTER X

### ECONOMIC DEVELOPMENT PROJECTS

#### OVERVIEW

In addition to amendments in the Housing and Community Development Act of 1981 that provided for State administration of the CDBG program, Congress added a provision to Section 105 of the Act (Eligible Activities) that permits assistance to for-profit entities. Section 105(a)(17) allows the "...provision of assistance to private, for profit entities, when the assistance is necessary or appropriate to carry out an economic development project."

This amendment to the Act opened the door for broader participation by the private sector in the CDBG program. In particular, under the present economic conditions which include high interest rates and a scarcity of investment capital, CDBG funds are becoming a valuable financial tool either in the form of write-downs, direct loans, or interest subsidies.

Since FY 1982 was the first year in which this provision was in effect, some questions still remain unanswered about the specifics of the relationship between the local grantee and the assisted entity. This section outlines both those issues that have been resolved (e.g. the applicability of various federal compliance requirements) and decisions that presently remain up to the discretion of the local grantee.

Economic development assistance under the CDBG program usually falls into two categories:

- construction or improvements to a public facility which is essential to the operations of a business, such as rail spur, increased sewage capacity, or streets, and/or

- direct assistance to the private entity in the form of a direct loan, interest subsidy, or write-down.

Activities in the first category, although they may directly benefit a single private entity, are viewed as public works projects undertaken by the local government, and therefore, are subject to the same procedures and applicable laws as any other public facilities projects. For additional information, see Chapter VIII, Public Facilities Projects.

In the case of direct financial assistance, the pass-through of monies to the private entities does influence the range of compliance and monitoring requirements. These requirements will be the focus of the remainder of this chapter.

#### APPLICABLE LAWS

##### -- ENVIRONMENTAL REVIEW

If the financial assistance to the business will be used for acquisition of property and/or construction of a facility, the grant agreement between the State and the locality will be conditional on an environmental review as described in Chapter II of this manual.

##### -- LABOR STANDARDS

Construction activities by a private business funded in whole or in part by CDBG funds are governed by the Davis-Bacon Act, Section 18-2-4, MCA, Copeland "Anti-Kickback" Act, and the Contract Work Hours and Safety Standards Act. As described in Chapter VI, Labor Standards, these requirements are waived in instances where the assistance is in the form of a loan guarantee or insurance.

##### -- CIVIL RIGHTS

All civil rights laws and executive orders as described in Chapter V, Civil Rights, apply to the use of CDBG funds for economic development regardless of the form of the assistance.

## -- ACQUISITION AND RELOCATION

The Uniform Act as described in Chapter VII applies only to property acquired for "public purposes." Since assistance such as loans to businesses may result in the acquisition of property for a "private purpose," the Uniform Act does not apply in these cases. Local governments may, at their own discretion, place certain conditions on the financial assistance to ensure that real property is acquired at fair market value and that any dislocation of persons and/or businesses is handled in an equitable manner.

## -- PROCUREMENT REQUIREMENTS AND ALLOWABLE COSTS

OMB Circular A-102 and A-87 as outlined in Chapters III, Procurement Standards, and IV, Financial Management, apply only to state and local units of government. Therefore, private firms need not adhere to the procedures incorporated in these Circulars. As in the case of acquisition/relocation, the local grantee may, at its discretion, place certain conditions on procurement by the assisted entity that ensures competitive bidding or describes eligible costs.

## LOCAL GRANTEE RESPONSIBILITIES

For each economic development project, the local grantee must take the following steps related to management and monitoring of these activities.

### Execute Assistance Agreement

To protect both the local grantee and the assisted entity, an assistance agreement or contract should be executed prior to the transfer of any financial assistance or beginning of construction of the related public facilities. As with the contract between the grantee and DOC, the assistance agreement should be reviewed by the attorney for the local governing body. The agreement must be submitted to the CDBG liaison for review and approval prior to its execution

and effective date. In addition, DOC will require that the agreement be referenced in and included as an attachment to the contract between the grantee and DOC. In addition, DOC will prohibit modification of the agreement without prior approval by DOC. Finally, DOC may require a section addressing program income. The assistance agreement should include the following items:

- names and addresses of all involved parties including the grantee, the firm, and (if applicable) participating private financial institutions;
- scope of services to be performed by both the grantee and the firm. Be specific;
- project schedule;
- community benefits and hiring plan. If the assistance was based on certain community benefits such as a specific number and/or percentage of employment by local residents or low/moderate-income individuals, this provision must be included in the assistance agreement;
- total project funding describing the amounts and sources of non-CDBG dollars;
- loan terms. If the assistance is in the form of a direct loan, the grantee must include the term of the loan (time for repayment), interest rate, and repayment schedule (payment intervals);
- provision for site visits by the grantee and DOC;
- payment of property taxes;
- termination clause both for convenience and cause; and
- requirement of compliance with all applicable laws, ordinances, rules and regulations of the grantee, the State of Montana, and the U.S. Government.

A sample assistance agreement is provided as Exhibit X-A.

#### Plan for Use of Program Income

The grantee should finalize plans as proposed in the grant application for use of recaptured program income primarily from repayment of principal and interest on direct loans. The use of



program income must be consistent with the provision included in the grant contract between the locality and DOC, and requirements of OMB Circular A-102, Attachment E.

#### Incurring Costs

As with any other CDBG project, actual project implementation cannot begin until grant conditions related to the release of funds, including conducting the environmental review, have been removed and the grantee has received a letter of authorization to incur costs from the Department of Commerce. Therefore, the grantee should make it clear to the assisted firm that no costs should be incurred until the date of letter of authorization to incur costs.

Although the firm is not subject to provisions of OMB and Treasury Circulars that prescribe fund disbursement, the local grantee must comply with these provisions. Therefore, the disbursement of funds to the grantee and, in turn, to the assisted firm should be tied to the actual need for assistance dollars as outlined in Chapter IV as well as to any special conditions in the contract term between the grantee and DOC or the assistance agreement.

Especially in the case of direct loans, the rate of drawdown will vary from case to case. If, for example, the assistance is for the purchase of equipment at the start-up of operations, it may be appropriate to request payment of the entire amount of the loan. However, if the firm is using the CDBG loan for construction of a new facility, the drawdown of the CDBG fund should be directly tied to the need to pay contractors for the actual work performed. As an option, DOC or the locality may include a provision on drawdown rates in the assistance agreement.

#### Monitor Project Activities

The local grantee remains liable for compliance monitoring of all CDBG funded activities. Therefore, the locality should devise a plan

for monitoring the specific scope of services described in the assistance agreement and ensure that the assisted entity adheres to all applicable laws and procedures.

For specific information on responsibilities for civil rights and labor standards, refer to Chapters V and VI of this manual.

#### Maintain Records

For each economic development project, the local CDBG office should maintain a file containing the following information:

- copies of the assistance agreement;
- copies of funding commitments from participating lenders;
- evidence of loan repayment;
- evidence of use of program income;
- evidence of community benefits; and
- files related to compliance with applicable laws discussed under chapters on environmental, civil rights, labor, public facilities, etc.

CHAPTER X

EXHIBITS

X-A - Assistance Agreement



EXHIBIT X-A

ASSISTANCE AGREEMENT

NOTE: This is an example only. Each contract will require its own specific information.

THIS AGREEMENT, is hereby entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_, by and between the (name of grantee: City, Town or County of \_\_\_\_\_) hereinafter referred to as the County/City/Town, and (name of company), (address), hereinafter referred to as the Firm.

WITNESSETH:

- A. Whereas the County/City/Town is interested in expanding its economic base with the primary emphasis on creating and retaining jobs;
- B. Whereas the County/City/Town is under contractual agreement with the Montana Department of Commerce to implement an economic development program with funding from the Montana CDBG Program; and
- C. Whereas the Firm is interested in maintaining and expanding its employment base;

NOW THEREFORE, the parties hereto do mutually agree as follows:

SCOPE OF WORK

- A. The County/City/Town shall:

(Specifically describe each action that the grantee will undertake as part of the economic development project including: any public facilities construction to support the firm's activities, any commitment of funds other than CDBG, and the amount of any CDBG loan with the terms for repayment. If the terms require additional explanation and/or maps, it can be provided as an attachment to the agreement.)

- B. The Firm shall:

(Specifically describe each action that the firm will undertake as part of the economic development project including: all commitments for owner financing through equity or private lending institutions as well as any commitment related to local employment.)

TIME OF PERFORMANCE

The services described under scope of work shall be undertaken upon execution of this document and end on \_\_\_\_\_ (date) \_\_\_\_\_. (In addition, it may be appropriate to insert several interim milestones and dates by which each party will complete specific actions described in the Scope of Work.)

TERMS AND CONDITIONS

- A. Conformance with Laws: The Firm will comply with all applicable laws, ordinances, rules and regulations of the grantee, the State of Montana, and the U.S. Government. (Or, all of the laws may be listed in paragraph form. See exhibits in Chapter VIII, Public Facilities.)

(Additional conditions or provisions may include:

- enforced delay; extension of times or performance;
- default;
- certificate of completion;
- conflict of interest;
- non-liability of elected officials or employees of the grantee;
- venue;
- liability and worker's compensation;
- payment of property taxes;
- communications between parties;
- progress reports; and
- indemnification.

IN WITNESS WHEREOF, Representatives of the County/City/Town and the Firm have executed this Agreement.

For the Town/City/County of

For the Firm

(signature)  
(Mayor, or all three County  
Commissioners)

(signature)  
(Typed name)

\_\_\_\_\_  
Title

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Legal Review

# **Chapter XI**

## **Project Close-Out**





## CHAPTER XI

### PROJECT CLOSE-OUT

#### OVERVIEW

This chapter describes the steps required to close-out a Montana CDBG project. It focuses on the following areas:

- prepare a substantive performance report;
- request State monitoring visit;
- arrange for audit; and
- complete close-out forms.

The ease with which the grantee can complete these requirements usually depends on the extent to which the grantee has maintained accurate and up-to-date records and files as outlined in the previous chapters. All of the information needed to complete the above should exist within the project files and require little, if any, additional information gathering.

The close-out of a grant is the process by which the grantor agency (DOC) determines that all applicable administrative actions and all required work have been completed. OMB Circular A-102, Attachment L includes the following close-out requirements:

- a refund to the grantor agency (DOC) of any balance of unobligated cash advanced to the grantee that is not authorized to be retained;
- the submission with 90 days of all financial, performance, and other reports required as a condition of the grant;
- when authorized by the grant, the grantor agency shall make a settlement for any upward or downward adjustments to the federal share of costs after final reports are received;

- an account of all property acquired with grant funds by the grantee;
- a final audit or the right to recover appropriate amounts after a final audit; and
- systematic settlement of terminations for cause or mutual convenience.

#### LOCAL GRANTEE RESPONSIBILITIES

##### Step 1 -- Prepare Substantive Performance Report

Within 90 days following the completion of the CDBG funded project activities, the grantee must submit to the CDEG liaison a Project Completion Report (PCR). In addition, multi-year comprehensive projects are required to submit a PCR within 60 days of the end of each program year.

In addition to substantive information about the project, the PCR requires the grantee to certify:

- that the information contained in the PCR is accurate;
- that all records related to the CDBG project are available on request; and
- that the CDBG funds were not used to reduce the level of local financial support for housing and community development activities.

The completed PCR should consist of no more than 10 pages using charts and tables where possible to summarize information. (The format for the PCR is provided as Exhibit XI-A.) The PCR must cover the following topics:

- progress on each funded activity exactly as stated in the grant contract;

- the extent to which the completed activity served to accomplish the national program objectives claimed in the application (benefit low and moderate income households, prevent or eliminate blighting conditions, or respond to immediate health threat where other financial resources are not available);
- the extent to which program benefits were accrued by low and moderate income person(s) and members of protected groups; and
- local efforts to promote fair housing, equal employment, and/or Section 3 business opportunities through expenditure of block grant dollars.

The grantee should also attach any other evidence of program performance including letters from assistance recipients or other citizens comments.

#### Step 2 -- Request State Monitoring Visit

Although the CDBG liaison may schedule monitoring visits throughout the course of the CDBG project activities, the grantee should inform the liaison of the project's completion and schedule a final monitoring visit. The final monitoring visit may consist of:

- a comprehensive review of the project and grantee management performance; or
- an examination of specific program or administrative issues that were identified through grantee reports or previous monitoring visits.

In either case the grantee must provide the CDBG liaison will all requested information.

At the end of the monitoring visit, the CDBG liaison will make a preliminary oral report of findings to the local administering agency, providing local officials with the opportunity to provide additional

materials that might quickly resolve the findings. Any unresolved findings will be contained in a Letter of Findings that will be sent from DOC to the chief elected official of the recipient jurisdiction.

Within 30 days of receipt of the Letter of Findings, the grantee must respond to the findings indicating corrective measures that have been or will be taken, or by providing additional information or materials that resolve the finding. (See Exhibit XI-B.) The grantee will then receive notification from DOC informing the grantee whether the corrective measures are sufficient.

### Step 3 -- Arrange for Audit

Following receipt of the Project Completion Report and grantee response to any monitoring visit findings, the CDBG liaison will notify the grantee to proceed with the financial and compliance audit of program expenditures.

Under the Montana program the grantee is given the option of securing an independent audit of CDBG funded activities or including the audit as part of a regularly scheduled county or municipal audit as required by Montana State law, provided that the regular audit occurs no later than 120 days following the completion of CDBG project activities. If the locality opts for the independent audit, the cost may be included in the program administration budget. Independent audit solicitation must be conducted under the procedures described for use of contractors with CDBG funds.

In either case, the audit must be conducted in compliance with requirements outlined in OMB Circular A-102, Attachment P and generally accepted auditing standards established by the American Institute of Certified Public Accountants and the Comptroller General. These standards are contained in "Standards for Audits of Governmental Organizations, Program, Activities, and Functions" ("Yellow Book.") Both of these documents are included in the Requirements Notebook.

In most instances auditors are unfamiliar with the specific compliance requirements of the CDBG program; therefore, the grantee should provide the auditor with a copy of another publication by the Comptroller General, "Guidelines for Financial and Compliance Audits on Federally Assisted Program" ("Red Book"), before the auditor begins examination of the program records. This booklet provides a uniform audit approach and uniform documentation procedures for financial and compliance audits.

Another publication is available upon request to the CDBG liaison. Handbook #IG6506.2, HUD Audit Guide and Standards for CDBG Recipients, covers the same requirements as the Comptroller General's Red Book and includes additional details pertaining to the CDBG program.

Auditors should make a special effort to detect possible fraud, waste, and abuse. Audits should include a review of the grantee's:

- internal accounting control system;
- drawdown practices;
- use of project income;
- direct costs charged to the CDBG program;
- indirect cost allocation plans and indirect costs charged to the CDBG program, if applicable;
- procurement practices;
- property management practices; and
- procedures and documentation supporting compliance with applicable laws and regulations.

Exhibit XI-C provides a list of common audit findings.

A copy of the audit report (an example is included as Exhibit XI-D) should be sent to the CDBG liaison. If there are audit findings, the grantee should prepare a Response to Audit Report (Exhibit XI-E) and submit it to DOC with a copy of the audit report. The CDBG liaison will notify the grantee whether the response is sufficient.

#### Step 4 -- Complete Close-Out Forms

Following receipt by DOC of the audit report and the grantee's response to findings, if any, the CDBG liaison will request that the grantee prepare a Certification of Completion which provides:

- final statement of costs;
- computation of grant balance;
- description of any outstanding costs and/or third-party claims against the CDBG funds; and
- certification releasing the State of any further financial obligations.

The original and two copies with original signatures must be submitted to the CDBG liaison for approval. A copy of the Certificate of Completion is provided as Exhibit XI-F.

If the computation of grant balance indicated that advance payments have exceeded actual program expenditures, the CDBG liaison will request the grantee to submit a check to the State equal to the excess advances.

If there are unsettled third-party claims against CDBG funds, the grantee must prepare a revised certificate upon resolution of the claims. The certificate should be executed and submitted to DOC as described above.

Every effort should be made to complete the close-out procedures as soon as possible. Delay in submitting the final certification or lack of response to audit or monitoring findings may indicate insufficient capacity to manage and implement CDBG funded projects and may result in loss of subsequent project funding.

## CHAPTER XI

### EXHIBITS

- XI-A - Project Completion Report
- XI-B - Response to DOC Letter of Findings
- XI-C - Common Audit Findings
- XI-D - Audit Report
- XI-E - Response to Audit Report
- XI-F - Certification of Completion





## EXHIBIT XI-A

## PROJECT COMPLETION REPORT

Grantee Name:	Address of Grantee:
Contract Number:	

Final Progress Report:

For each line item in the contract scope of work (e.g. administration, construction, acquisition, rehabilitation, economic development loans) provide the following information:

- A. Name of Activity
- B. National Objective(s) Served
- C. Actions Accomplished
- D. Actions Remaining & Anticipated Completion Date
- E. Total Actual Expenditures for the Activity
- F. Summary of Benefits for Low/Mod Income Households and Minorities
  - percent of expenditures benefiting low/mod income;
  - total expenditures benefiting low/mod income;
  - number of low/mod income beneficiaries; and
  - number of minority beneficiaries.

Citizen Comment:

A summary of each citizen comment received by the local governing body or the local CDBG administering unit should be attached to the Project Completion Report. The summary should include the grantee's assessment of the citizen comment and a description of any action taken in response to the comment.

Certifications:

As chief elected official of the grantee jurisdiction, I certify that:

- a. the information contained in this report is accurate to the best of my knowledge;
- b. all records related to grant activities are available on request; and
- c. CDBG funds were not used to reduce the level of local financial support for housing and community development activities.

Typed Name and Title of Chief Elected Official:	
Signature of Chief Elected Official:	Date:



EXHIBIT XI-B

RESPONSE TO DOC LETTER OF FINDINGS  
(Type on letterhead of grantee)

(Date)

Montana Department of Commerce  
Community Development Division  
Cogswell Building, Room C-211  
Capitol Station  
Helena, MT 59620

NOTE: This is an example only. Each response will require its own specific information.

This letter is in response to your letter dated (date) summarizing the results of your monitoring visit of (dates).

The (name of grantee: City, Town, or County of \_\_\_\_\_) has taken the following corrective actions:

(describe actions being taken in response to findings from  
DOC monitoring, for example:)

The (name of grantee) received the wage rate decision for laborers working on the road paving, and they were included in a contract amendment signed by the contractor on December 10. We amended the contract value by \$2,500 to cover the differential in wages previously paid and those required under the Davis-Bacon provisions. A conference with the contractor and the affected laborers was held to explain the problem and all parties appeared to understand and be satisfied with our resolution. The Second Avenue paving project is now in order.

I have reviewed the sections of the CDBG 1983 Grant Administration Manual related to labor standards and have identified our omissions that led to this situation. I believe that future bidding procedures and contracts will be vastly improved as a result of the monitoring visit and your guidance.

Thank you for your assistance in this matter. If there are any remaining questions about the wage rates or any other aspect of our CDBG program I hope you will not hesitate to contact me.

Sincerely,

(name of local project administrator)  
(title)  
(mailing address)



EXHIBIT XI-C  
COMMON AUDIT FINDINGS

Lack of Fiscal Control and/or Accountability

- Books not maintained on a current basis or not kept in accordance with procedures equivalent to OMB Circular A-102.
- All receipts, (e.g., CDBG advances, loan application fees, rental income, program fees, bid deposits, etc.) not recorded in the Cash Receipts Ledger.
- Bank reconciliations and subsidiary ledgers not maintained; such as rehabilitation loan ledgers that accurately identify amounts borrowed, payments, additions and balances.
- Financial data, as shown on performance reports, not in agreement with the books.
- Unsupported or insufficient support for payments.
- Incurring of costs contrary to OMB Circular A-87 (formerly Federal Management Circular 74-4).
- Accounting systems of recipients not maintained in a manner equivalent to OMB Circular A-102.
- Expenditures made prior to State's release of funds date.
- Escrow funds/advance/accounts receivable charged as costs.
- Program income not used for approved CDBG activities.

Substitution of New Activities

- Funding of projects outside approved boundaries or for ineligible activities.

Contracting Irregularities

- Contracts awarded to other than the low bidder without justification.
- Contracts awarded without required competitive bids.
- Change orders issued for claimed "additional" work.
- Contractor's failure to post required bonds (i.e., payment and performance bonds).



EXHIBIT XI-D

AUDIT REPORT

(Date)

(Name of grantee: City, Town or County of \_\_\_\_\_)

NOTE: This is an example only. Each response will require its own specific information.

We have completed our examination of (name of grantee) pertaining to its Montana Community Development Block Grant Fund for the year ended (date). We are commenting on their internal control and compliance with federal and State CDBG requirements.

Based on our tests of transactions and examinations of records we believe the grantee has substantially complied with the financial terms and conditions of the contract with the Department of Commerce and the regulations, policies, and procedures prescribed under the Montana CDBG Program.

Our findings are presented below:

1. An expenditure of \$300.00 for advertising is unsupported by documentation indicated that the cost incurred related to the local CDBG program and was eligible for reimbursement as an administrative expense.
2. The \$1,200.00 expended for the salary of \_\_\_\_\_, City Clerk, is unsupported by payroll records documenting the hours spent on CDBG activities as opposed to general city administration.

As part of our examination, we reviewed and tested the grantee's system of internal accounting control to the extent we considered necessary to evaluate the system as required by generally accepted auditing standards. Under these standards, the purpose of such evaluation is to establish a basis for reliance thereon in determining the nature, timing, and extent of other auditing procedures. Additionally, our examination included procedures necessary in our judgment to determine compliance with contractual terms and conditions and regulations, policies, and procedures prescribed by the Montana CDBG program and by management and the governing body of (name of grantee), insofar as such compliance review was necessary under the provisions of Section \_\_\_\_\_ of the Guidelines for Financial and Compliance Audits of Federally Assisted Program, dated February 1980. Since the grantee does not charge indirect costs, there was no cost allocation plan to grantee.

The objective of internal accounting control is to provide reasonable, but not absolute, assurance as to the safeguarding of assets against loss from unauthorized use or disposition, and the reliability of financial records for preparing financial statements and maintaining

accountability for assets. The concept of reasonable assurance recognizes that the cost of a system for internal accounting control should not exceed the benefits derived and also recognizes that the evaluation of these factors necessarily requires estimates and judgment by management.

There are potential limitations that should be recognized in considering the potential effectiveness of any system of internal accounting control. In the performance of most control procedures, errors can result from misunderstanding of instructions, mistakes of judgment, carelessness, or other personal factors. Control procedures whose effectiveness depends upon segregation of duties can be circumvented intentionally by management with respect either to the execution and recording of transactions or with respect to the estimates and judgments required in the preparation of financial statements. Further, projection of any evaluation of internal controls to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, and that the degree of compliance with the procedures deteriorates.

Our study and evaluation of the grantee's system of internal controls and our review of its compliance with contractual terms, regulations, policies and procedures which was made for the purpose set forth in the first paragraph of this section, disclosed no conditions that we believe to be material weaknesses or evidence of noncompliance with requirements set forth by HUD or the Montana Department of Commerce.

\*\*\*\*\*

We would like to acknowledge the courtesy and cooperation extended to us by the personnel of the (name of grantee) during our examination. Should you have any questions concerning the matters discussed herein, we shall be pleased to discuss them with you at your convenience.

Yours very truly,

(name of firm)

Certified Public Accountants



EXHIBIT XI-E

RESPONSE TO AUDIT REPORT

NOTE: This is an example only. Each response will require its own specific information.

(Date)

Montana Department of Commerce  
Community Development Division  
Cogswell Building, Room C-211  
Capitol Station  
Helena, MT 59620

In response to the Audit Report by (name of CPA firm) of (name of grantee)'s CDBG Project:

(include comments, for example:)

1. The expenditure for \$300.00 for advertising was related to publicity for the CDBG rehabilitation program and the advertising of bids for the Second Avenue paving project. We had, in fact, misplaced the copy of the invoice that should have been in the financial management file. We obtained a copy of the invoice from the business office of the Gazette and have enclosed a xerox of the invoice for your information.
2. We have reconstructed payroll for the City Clerk based upon his/her desk diary, appointment calendar, and the like. A copy is attached. The reconstruction accounts for 115 hours at \$9.60 per hour. That accounts for \$1,104 of the unresolved \$1,200 identified in the audit report. The remaining \$96.00 will be paid out of the General Fund. We have instituted a time and attendance sheet procedure to avoid a recurrence of this problem.

We believe the actions described above adequately respond to the audit findings. We look forward to your response.

Sincerely,

(name of local project administrator)  
(name of grantee)  
(mailing address)  
( ), Montana Zip)



EXHIBIT XI-F  
CERTIFICATION OF COMPLETION

MONTANA CDBG PROGRAM

GRANTEE: \_\_\_\_\_  
CONTRACT #: \_\_\_\_\_

A. FINAL STATEMENT OF COST

Line Activity	To be completed by Grantee			DOC Use Only
	Paid Costs	Unpaid Costs	Total Costs	
Administration				
1. Personal Services (includes all salaries; wages & fringe benefits)				
2. Supplies Office Supplies (Small items of equipment only)				
3. Purchased Services Postage, Printing & Publications, etc. Audit Legal Other				
4. Consulting Services (List each Contract)				
5. Telephone				
6. Travel and Training				
7. Rent				
8. TOTAL CDBG ADMINISTRATIVE COSTS				
Construction				
9. Acquisition				
10. Engineering				
11. Construction Activities (List by Contract)				
12. TOTAL CDBG CONSTRUCTION COSTS				
OR				
Project				
9. Acquisition/Demolition				
10. Rehabilitation				
13. TOTAL CDBG PROGRAM COSTS				
14. TOTAL CDBG PROJECT COSTS  (lines 8+13)				
15. CDBG PROJECT INCOME				
16. Grant Amount Applied to Project Costs (line 14 less 15)				

## B. COMPUTATION OF GRANT BALANCE

Description	To be completed by Grantee	DOC Use only
	Amount	Approved Amount
a. Grant Amount Applied to Project Costs (line 16)		
b. Unsettled Third Party Claims		
c. Subtotal		
d. Grant Amount per Grant Contract		
e. Unutilized Grant Funds		
f. Grant Funds Received		
9. BALANCE OF GRANT PAYABLE		

### C. Unpaid Costs & Unsettled Third Party Claims

1. List any unpaid costs and unsettled third-party claims against the CDBG grant. Describe circumstances and amounts involved.

☐ Check if continued on additional sheet and attach.

## D. CERTIFICATION OF RECIPIENT

It is hereby certified that all activities undertaken by the Recipient with funds provided under the contract identified on Page 1 hereof, have, to the best of my knowledge, been carried out in accordance with the Contract; that proper provision has been made by the Grantee for payment of all unpaid costs and unsettled third-party claims identified above; that the State of Montana is under no obligation to make any further payment to the Recipient under the Contract in excess of the amount identified as C. Subtotal under Computation of Grant Balance, above; and that every statement and amount set forth in this instrument is, to the best of my knowledge, true and correct as of this date.

DATE	TYPED NAME & TITLE OF RECIPIENT'S AUTHORIZED REPRESENTATIVE	SIGNATURE OF RECIPIENT'S AUTHORIZED REPRESENTATIVE
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## E. DEPARTMENT OF COMMERCE APPROVAL

This Certification of Completion is hereby approved. Therefore, I authorize cancellation of the unutilized contract commitment and related funds reservation and obligation of \$\_\_\_\_\_, less \$\_\_\_\_\_ previously authorized for cancellation. (Line 3, above)

DATE	TYPED NAME & TITLE OF STATE AUTHORIZED OFFICIAL	SIGNATURE OF STATE AUTHORIZED OFFICIAL
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